Nos. 10112, 10114, 10115, 10123

United States
Circuit Court of Appeals
For the Ninth Circuit.

No. 10112.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10114.
STOCKHOLDERS PUBLISHING COMPANY, INC.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10115.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10123.
THE TIMES-MIRROR COMPANY, a corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record
In Four Volumes
VOLUME IV
Pages 1477 to 1842

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

CELESTINO SANCHEZ

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Sanchez, where do you live? A. At 627 Crocker Street.

Q. (By Mr. Mouritsen) In the city of Los Angeles? A. That is right.

Q. And have you handled the Los Angeles Examiner? A. I have.

Q. Have you ever handled the Los Angeles Examiner at Fifth and Main Street?

A. I did. [1650]

Q. And when did you start to handle the Examiner at that place? A. May 14th.

Q. What year? A. 1939.

Q. And prior to that time did you have a conversation with any Examiner district man regarding your operation on that spot? A. I did.

Q. With whom? A. Abie Pierce.

Q. Where did that conversation take place?

A. That conversation occurred at the S. P. Depot.

Q. And was anyone else present other than you and Mr. Pierce? A. Not that I can recall of.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce?

A. Mr. Pierce said, "Well, now that the station is going to close, I have a spot for you, that

(Testimony of Celestino Sanchez.)

is at 5th and Main, if you want it, and if not you can take your choice or either go to the new station."

That is where my other spot was supposed to have been, at the new station, but he mentioned the fact in case I didn't get that spot I was to receive 5th and Main. [1651]

Q. Was that about all the conversation you had with him at that time?

A. That was all the conversation at that time, yes.

Q. Did you have a further conversation with him regarding your operation at 5th and Main?

A. I did.

Q. And when did that occur?

A. That occurred about two days after I had been on the spot. That was about the 16th of May of 1939. He mentioned the fact that I had to distribute the papers out to my off-spots.

Q. Where did you have this conversation with him?

A. That conversation, I had it at Fifth and Main.

Q. And who else was present, if anyone?

A. Oh, there was hustlers but they didn't pay any attention to any of that, because it was directly towards me.

Q. This conversation was with Mr. Pierce; is that correct? A. That is correct.

Q. Will you state what Mr. Pierce said to you at that time and what you said to him?

(Testimony of Celestino Sanchez.)

A. Mr. Pierce says to me, he says, "These papers are supposed to be distributed to your off-spots and also to First, Second, Third, and Fourth and Main," the other spots besides my off-spots, and I said, "Well, all right."

Q. Do you recall anything further that he said at that time?

A. No, not anything else at that time.

Q. And you had some off-spots on that corner at Fifth and Main? A. I did. [1652]

Q. How many? A. I had four off-spots.

Q. And after that time did you distribute papers to those off-spots? A. I did.

Q. And to these other places he enumerated?

A. That is right.

Q. Did you receive any money for doing that, from Mr. Pierce? A. I did not.

Q. Did you receive anything else of value?

A. Not that I can recall of.

Q. When you first took over the corner at Fifth and Main, at what hour did you receive the first edition of the paper, as a general rule?

A. As a general rule we got the papers—one time the papers come out about 5:45 to the corner there. Then there was a change and they didn't get there until 6:00 o'clock.

Q. Now, did you ever have a conversation with Mr. Pierce regarding the time when you were to start selling? A. No, I didn't.

Q. After you had been on the spot for some

(Testimony of Celestino Sanchez.)

time, was there any change in the hour when the papers started to appear? A. Yes, there was.

Q. And what was the change? [1653]

A. The papers started coming out later.

Q. Approximately how much later?

A. About 15 minutes.

Q. So that they started coming out at approximately what time of the evening?

A. About 6:00 o'clock.

Q. Do you recall about when that change occurred?

A. That change occurred, oh, about a month after I had been on the spot.

Q. That would be approximately around the middle of June, 1939? A. That is right, yes.

Q. Prior to that time did you have any conversation with Mr. Pierce regarding that change in hours?

A. Yes. He did mention the fact that—

Q. Where did he mention that fact to you?

A. At the Belmont Cafe.

Q. Where is the Belmont Cafe?

A. Fifth and Main Street.

Q. Was anyone else present?

A. Oh, there was several newsboys there.

Q. What did he say to you at that time?

A. He said, "Well, the papers are coming out later now."

Q. Is that all of the conversation that you recall?

A. That is all I recall at that time, yes. [1654]

(Testimony of Celestino Sanchez.)

Q. Well, after that time, did you have a conversation with him respecting the sale of papers before 6:00 o'clock?

A. I did at the S. P. depot.

Q. Can you fix the time of that conversation?

A. Will you repeat that question?

(The question referred to was read by the reporter, as set forth above.)

A. Well, I would say about—some time in March—about the 10th of March.

Q. Of what year? A. 1939.

Q. Did you handle the Examiners at the S. P. depot? A. I did.

Q. Was anyone else present at that conversation?

A. There was some young kids there, that was all.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce?

A. Well, he—he said, "There has been a change. You are not supposed to sell any papers until 6:00 o'clock. Hold them until 6:00 o'clock, he said.

Q. And did you hold the papers after that time until 6:00 o'clock.

A. I had to hold them; yes, I did.

Q. Do you recall when the American Legion Convention was held in Los Angeles? [1655]

A. September, 1938.

Mr. Mouritsen: I think we have a stipulation on that, Mr. Hall, but I do not recall the exact date. Is that—

(Testimony of Celestino Sanchez.)

Mr. Hall: I think the young gentleman coincides with my view in the matter, counsel.

Q. (By Mr. Mouritsen) During the period while the American Legion was in town did you receive any inserts for the paper other than the regular edition?

A. I did. I got what they call—It was an American Legion supplement. It is the official organ of the American Legion, but I don't quite remember just what the wording was on it, but it was a supplement of the Examiner—they furnished the supplement.

Q. Did Mr. Pierce bring that supplement around with the regular paper? A. He did.

Q. Was the supplement inside the paper?

A. No.

Q. Did he say anything to you regarding the supplement? A. Yes, he did.

Q. What did he say?

A. He says, "Be sure that each one of these Examiners is stuffed with one of these supplements."

Q. Did you stuff the insert in the regular paper? A. I did. [1656]

Q. During that period did Mr. Pierce ever say anything to you regarding distribution of certain papers?

A. Not during that period, no.

Q. Or shortly before that period, did he?

A. No.

(Testimony of Celestino Sanchez.)

Q. Did he ever have a conversation with you regarding the distribution of Examiners to a trainload of people?

A. I did. During the American Legion Convention.

Q. About where did the conversation take place?

A. This conversation took place at the Examiner alley.

Q. And was anyone else present?

A. There was several fellows there. There is one fellow right here in the hall that was there.

Q. Who is that?

A. Oh, he was just here just now. He is a crippled fellow, kind of shaky-like. Well, he's left now. He was here just a minute ago.

Q. You don't recall his name?

A. I don't recall his name, no.

Q. What did Mr. Pierce say to you and what did you say to Mr. Pierce at that time?

A. He says, after we got the car loaded with the papers and the insert, he says, "Be sure that these papers are all inserted and supply every one of the delegation of the—" I don't remember whether it was the Phoebe Hearst Post there—when the American [1657] Legion Post came, to supply them with the paper free of charge.

Q. Did you follow those instructions?

A. I did.

Q. Did that take a certain amount of your time from your selling operations?

(Testimony of Celestino Sanchez.)

A. It did. It took about an hour.

Q. Did you receive any pay for doing that work?

A. I did not.

Q. Did you receive anything else of value from Mr. Pierce? A. No.

Q. After commencing your operations on Fifth and Main, did you ever have a conversation with Pierce about your being off the corner?

A. I did, on one occasion.

Q. About when was that?

A. That was about—about three—about three weeks after I had been on the corner.

Q. It would be about the first week in June, 1939? A. Yes, that's it. Yes.

Q. Where did the conversation take place?

A. The conversation took place right on the corner of Fifth and Main.

Q. Was anyone else there?

A. There was a fellow in the car with him, but I don't [1658] remember his name.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce.

A. He said to me, he says, "Jesus Christ, Sellie, you shouldn't get off the spot." He says, "Don't you know that we have got checkers around and if they catch you off the spot that will mean my job and I'll have to let you go?"

Q. Was that about all the conversation that you recall?

A. I said to him, "Well, Abe, there is no sale

CELESTINO SANCHEZ

(Testimony of Celestino Sanchez.)

here from 3:00 o'clock on until 6:00 o'clock. You are lucky if you sell four papers. It's a different thing; if it was of any value, all right, I'd stick around."

He said, "I don't care about that." He said, "The spot has got to be covered, irregardless of whether there is one paper sold here."

Q. Was anything further said?

A. That was all.

Q. During the period while you were on the corner of Fifth and Main did Mr. Pierce ever give you more copies of the paper than you wanted?

A. He did on the midnight edition.

Q. Did that happen on more than one occasion?

A. That did, on many occasions.

Q. And on the occasions when he gave you the extra copies of the midnight did you have to pay for them at that time? A. I did, yes. [1659]

Q. Then were you permitted to return them later? A. Yes, the following day.

Q. When you operated on the corner of Fifth and Main, did you receive any advertising placards?

A. I did. Those—those war maps.

Q. About when did you receive those?

A. About the outbreak of the war, or perhaps maybe before that. They had them running currently.

Q. Well, can you fix the approximate date when that was? A. No, I can't.

Q. When did you cease operating on the corner?

(Testimony of Celestino Sanchez.)

A. About the 22nd of October, 1939.

Q. How long prior to the time when you ceased operating on that corner was it that you received these maps?

A. Oh, at Fifth and Main, we got the maps right after the outbreak of the war. That was in September.

Q. And at that time did you have any conversation with Pierce regarding those maps?

A. Yes. He—he mentioned the fact that everyone of these—

Q. Wait a minute. Where did the conversation take place?

A. This conversation took place—well, he was on the truck, at Fifth and Main.

Q. Was anyone else present?

A. Yes. My off-spot hustlers.

Q. What did Mr. Pierce say to you and what did you say to [1660] Mr. Pierce?

A. Well, Mr. Pierce said to me, he said, "Be sure that these placards are on display and that—and these maps have to be returned at the end of the night."

And I said, "Yes, all right."

Q. Did you display the maps on the corner?

A. I did.

Q. Did you do anything else with them other than display them? A. No.

Q. Did you return them at the end of the night?

A. That is right.

(Testimony of Celestino Sanchez.)

Q. Where did you check in during the period while you were operating on Fifth and Main?

A. The Belmont Cafe at Fifth and Main.

Q. And to whom did you check in?

A. Abe Pierce.

Q. As a general rule, during what hour of the day or night did you do that? A. About 1:30.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) When you displayed those maps, what did you do with them?

A. Put them right on the fire plugs, on any place where I [1661] could hang them on.

Q. Just set them up so the public could look at them; is that correct?

A. That was the general idea.

Q. And is the same thing true about the placards?

A. The placards and these maps, as I understand, they are all one. Of course, from time to time they appeared in the Examiner; that is, our Examiner district man brought us around a small—those signboards—

Q. When you were talking about maps and placards then, you were talking about the same thing?

A. The same one, yes.

Q. I understood you to say that you handled the Los Angeles Examiner down at the old Southern Pacific depot? A. That is correct.

Q. And that was the place where you were sel-

(Testimony of Celestino Sanchez.)

ling Examiners at the time of the Legion Convention, wasn't it?

A. That is right, yes.

Q. You had some boys working for you there, didn't you? A. I did, yes.

Q. You took care of their compensation yourself, didn't you? A. Yes.

Q. I mean they were selling Examiners for you?

A. That is right. [1662]

Q. You had quite a little business down there, didn't you?

A. Well, I was making a living, if that is what you want to know.

Q. Well, did you have a bootblack stand?

A. Well, that doesn't concern you a bit.

Q. I see.

Well, you might let me know one way or the other.

A. Well, the idea is that I am supposed to answer your questions, not you answer them. Well, never mind. Let's forget it.

Q. Well, let me put you another question.

A. All right.

Q. At the time you were selling Examiners at the Southern Pacific depot, were you or were you not operating a bootblack stand?

A. I don't have to answer that question.

Q. You can answer either yes or no.

A. Well, I will make it simple for you: Yes.

Q. Now, these boys that were working for you,

(Testimony of Celestino Sanchez.)

they were selling the Los Angeles Examiner, weren't they? A. That is correct.

Q. Are you still selling the Los Angeles Examiner? A. I am not.

Q. That is right. I think you said you stopped sales of [1663] the Los Angeles Examiner on October 22, 1939. A. That is right, yes.

Q. Is that right?

A. That is right, yes, sir.

Q. How do you fix the date October 22nd?

A. Merely by the fact that I was checking over the other day, over at work, where I work, and they have an account at the time that you went to work there, and I just happened to glance at the date and I knew that was the date because I was checking my Social Security.

Q. You are working now at the same place you started to work when you stopped selling the Los Angeles Examiner; is that correct?

A. That is right, yes.

Q. Would you mind telling us what that employment is? A. Furniture finisher.

Q. And you have had full time work as a furniture finisher since you stopped selling the Examiners; is that correct?

A. I have been a full time worker, yes.

Q. So that since October 22, 1939, you haven't been a newsboy?

A. That is right, since the 22nd of October, 1939.

(Testimony of Celestino Sanchez.)

Q. Did you have this job with the furniture finisher establishment before you stopped selling the Los Angeles [1664] Examiner?

A. I got that job on a Thursday and I went to work on a Saturday, but after work I come back and finished my night on the papers and that Saturday was my last night.

Q. So you really quit selling papers to take that furniture finisher's job, didn't you?

A. That is right, yes.

Q. Had you worked at the furniture finisher's place of business at all before that?

A. I worked in another place for a period of about six months.

Q. What six months period was that?

A. Oh, let me see; that was in 1935. [1665]

Q. (By Mr. Hall): Had you worked at furniture finishing between 1935 and October of 1939?

A. Yes, I worked, for six months, that was all, in 1935 up to about—let's see; I started working there in about September of 1935, until about—let me see. That was about in February of 1936. That was the last time.

Q. And between February, 1936 down to October of 1939, you hadn't done any work in any furniture finishing establishment? A. No.

Q. You hadn't had anything to do with that business? A. No, sir.

Q. These Los Angeles Examiner newspapers that you sold were either the Peach or the CC or the CCC editions, weren't they?

(Testimony of Celestino Sanchez.)

A. That is right, yes. Of course, on Saturdays they had different markings on them.

Q. Did you sell the Sunday Examiner?

A. I did.

Q. Now, you testified that there were occasions when Mr. Pierce gave you more copies of the Los Angeles Examiner than you wanted.

A. That is right, on the Midnight.

Q. But your unsold copies of the Examiner you always got credit for, didn't you? [1666]

A. I got returns, if that is what you mean.

Q. Well, you got full returns?

A. Yes, I did.

Q. That insert that was put in the newspapers at the time of the Legion Convention helped you to sell the Los Angeles Examiner, didn't it?

A. That wasn't put by the Examiner. The newsboys stuffed them.

Q. But after the paper was stuffed with that insert or supplement, it was easier for you to sell the paper to Legionnaires, wasn't it?

A. Yes, it was.

Q. As a matter of fact, you wouldn't have been able to sell very many papers to Legionnaires that hadn't been stuffed with that supplement in competition with other newsboys who were selling newspapers that had been stuffed with that supplement, would you? [1667]

Redirect Examination

Q. (By Mr. Mouritsen): As a matter of fact, Mr. Sanchez, after you stuffed the insert inside of

(Testimony of Celestino Sanchez.)

the papers, you couldn't see the insert, could you, inside of the paper? A. No.

Mr. Mouritsen: That is all.

Mr. Hall: You said that there were other boys down there at the old Southern Pacific station that were selling Los Angeles Examiners for you?

The Witness: That is right.

Mr. Hall: Working for you?

The Witness: That is right.

Mr. Hall: Did you make a profit on the papers that they sold?

The Witness: I did.

Mr. Hall: That is all.

Mr. Cosgrove: Before adjournment, if the Examiner please, may we have a stipulation, Mr. Mouritsen, that the testimony given this afternoon by the witness Celestino Sanchez, has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: May we have the same stipulation on behalf of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Trial Examiner Kennedy: So stipulated. [1668]

Mr. L. B. Binford: And the Stockholders Publishing Company, Mr. Mouritsen?

Mr. Mouritsen: So stipulated. [1669]

(Testimony of Celestino Sanchez.)

Tuesday, June 25, 1940.

Met, pursuant to adjournment, at 9:30 o'clock A. M [1671]

Trial Examiner Kennedy: The hearing will be in session.

Yesterday during a recess in the morning, I sent the following telegram to my chief, "George A. Pratt, Chief Trial Examiner, National Labor Relations Board, Washington, D. C. Re XXI-R-1084.

"Approximately 200 cards apparently designating petitioner presented for my inspection. Los Angeles Examiner has no payroll nor list of newsboys with which to compare these cards. Please wire whether Board or Petitioner should be directed to prepare this list. Such preparation would probably require many days and considerable expense. Answer. Los Angeles Labor Board. (Signed) Thomas H. Kennedy."

This morning I received the following reply directed to me by telegram, that reads as follows:

"Evidence should be introduced to show that persons signing cards are employees. Burden is on Petitioner to show this fact. I assume Respondent denies card signers occupy position of employees. If so, evidence should be introduced to show what each individual does. (Signed) George A. Pratt, Chief Trial Examiner."

That is all I know about it. [1673]

JOHN DEERING

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Deering, did you ever handle the Los Angeles Examiner?

A. I did.

Q. Did you ever handle it at Sixth and Main?

A. Yes, sir.

Q. From whom did you obtain that spot?

A. The District Manager, A. Pierce.

Q. And about when did you obtain that spot from him?

A. I would say approximately the second or third week in [1674] August of 1938.

Q. Did you have a conversation with him prior to that time when you obtained it?

A. I did.

Q. Where did you have the conversation?

A. At the Examiner alley.

Q. Was anyone else present?

A. I don't recall anyone else listening in, if that is what you mean.

Q. Well, there was a number of other newsboys and district men in the alley?

A. Well, they were all down there, yes sir.

Q. They did not take part in the conversation; is that correct? A. No.

Q. And was this just prior to the time when you started to sell at Sixth and Main?

(Testimony of John Deering.)

A. That is right.

Q. Will you tell what you said to Mr. Pierce and what he said to you?

A. Well, after ascertaining that he was the—one of the downtown district men, I asked him if he had a spot open, and he asked me for whom I had worked before, and I mentioned one other district man with whom I had worked, and so he said, "Well, I think I can find a spot for you. Come down to Sixth [1675] and Main and wait for me down there."

Q. And did you do that? A. I did.

Q. Did you have a conversation with Mr. Pierce at Sixth and Main?

A. He told me to go where the main spot man said——

Q. The answer is yes or no. A. Yes.

Q. Was anyone else present at that conversation?

A. The main spot man was present besides myself.

Q. Do you recall his name?

A. I don't recall his last name. He was a one-legged man. His first name was Larry.

Q. And approximately how long after your first conversation did it take place?

A. The same evening.

Q. The same evening about——

A. Perhaps an hour later.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce?

(Testimony of John Deering.)

A. Well, he told me to go where the main spot man sent me, and at the same time right immediately following that he told the main spot man to put me at the station entrance.

Q. What station?

A. Pacific Electric Station. [1676]

Q. Was that near Sixth and Main?

A. Yes, sir.

Q. Do you recall anything else that was said at that time?

A. Nothing by Mr. Pierce. [1677]

Q. And did you take the papers and start selling them in front of the P. E. Station?

A. I did.

Q. About how long did you continue to operate at or in front of the P. E. Station?

A. Well, as near as I can recollect, I sold there until perhaps about the 1st of February of 1939.

Q. Now, during the period while you were operating at that spot, did you ever have any conversation with Mr. Pierce regarding the place where you were to sell? A. Yes, I did.

Q. And did you have more than one such conversation? A. Yes, sir.

Q. Can you fix the approximate time when you had the first [1678] conversation regarding the place where you were to sell?

A. I can fix it approximately, but not exactly.

Q. Well, will you give us the approximate date when it happened?

(Testimony of John Deering.)

A. I would say about the 1st of—the 1st of January.

Q. Of what year? A. 1939.

Q. And where did the conversation take place?

A. It took place at the corner of Sixth and Main.

Q. Was anyone else present?

A. The main spot man was present.

Q. Was that this same Larry? A. Yes, sir.

Q. Now, what did Mr. Pierce say to you at that time and what did you say to Mr. Pierce regarding the place where you were to operate?

A. He told me that I should stand away from the building and out on the sidewalk, and I told him that I could sell more papers and catch more people by standing right directly against the Pacific Electric Building so as to catch the people coming out of the building and the people walking both directions on the sidewalk. And he told me that I was wrong, and that I could sell more papers standing out on the sidewalk and that I should stand out there.

Q. Was that all of the conversation? [1679]

A. At that time, yes, sir.

Q. And did you stand out away from the building at that time as he had instructed you?

A. I did.

Q. After that time, did you have a further conversation with him regarding the place where you would operate? A. Yes, sir.

I asked him if it was not possible to obtain a better spot; that I could not make very much

(Testimony of John Deering.)

money where I was and I would like to have a better spot if it was possible.

Q. About when did this conversation occur?

A. Well, it occurred quite a number of times; but about the first time, I would say, was within a week after the last mentioned conversation.

Q. And where did it take place?

A. In the Belmont lunch room at Fifth and Main.

Q. Where did you check in?

A. I check in to the main spot man at Sixth and Main.

Q. And who were present at this time—at the time of this second conversation?

A. There were several news vendors present. I believe among those present—pardon me; I will correct that.

Among those present was one elderly man who sells papers. His name was Marco.

Q. I see. [1680]

And was anyone else other than Marco present?

A. There were several others present, but I don't recall who they were, or their names.

Q. You and Mr. Pierce were there; is that correct? A. Yes, sir.

Q. Will you tell us what Mr. Pierce said to you and what you said to Mr. Pierce?

A. I asked him if it was not possible to obtain a better spot; that, because of the fact I was married, I couldn't make enough money to subsist where

(Testimony of John Deering.)

I was; I was running in the hole financially and I understood that from time to time he had much better spots than that open, and I would like to fall into them, at least for seniority if for no other reason.

Q. And what did he say, if anything?

A. He said, "Well, you should come up to see me more often so that I keep you in mind, and as soon as I have a better spot open I will let you know."

Q. Was that about all the conversation?

A. Well, he asked various of those newsboys who sold for them that were gathered around the table there at that time if they hadn't made money working for him.

Mr. Hall: Is this part of the conversation?

The Witness: Yes, sir. And of course these men replied that they were making money working for him.

Q. (By Mr. Mouritsen): Mr. Deering, did you ever have a con- [1681] versation with him, with Pierce, regarding your working in front of the drug store near Sixth and Main? A. I did.

Q. When did that conversation occur?

A. That took place sometime in January of 1939. I don't remember the date.

Q. And where did that conversation take place?

A. At Sixth and Main.

Q. Who were present?

A. The main spot man and myself.

(Testimony of John Deering.)

Q. Was anyone else present?

A. Not that I recall.

Q. Was this Larry the main spot fellow?

A. Yes, sir.

Q. What did he say to you at that time and what did you say to him? [1682]

The Witness: The main spot man told me that I should not sell in front of the entrance to the drug store; that I should sell in front of the entrance to the station itself.

Q. During the period while you were on that spot, Mr. Deering, did Mr. Pierce furnish you with a change apron? A. He did.

Q. Did he furnish you anything else?

A. He furnished me from time—or excuse me. I will withdraw that.

Any other supplies that I was furnished were furnished by Mr. Pierce through the main spot man.

Q. What other supplies were furnished through the main spot man?

A. I was furnished placards and other advertising matter, advertising features in the Examiner, from time to time; and at the time the American Legion held their convention in Los Angeles, I was furnished a cap patterned after the American Legion cap, colored blue and yellow, and on the cap it read "Welcome, Legionnaires," and "San Francisco Examiner"—pardon me, really, "Examiner."

Q. Did the main spot boy say anything to you regarding the use of that hat? [1683]

(Testimony of John Deering.)

A. He said "The boss says you are to wear this." [1684]

Q. (By Mr. Mouritsen): About when did this conversation take place?

A. Pardon me? I did not quite get whose conversation it was.

Q. Well, that was with reference to the Legion cap.

A. Well, I would say approximately two or three days before the American Legion convention officially opened.

Q. And that date has been fixed as sometime in September, 1938.

Where did the conversation take place?

A. At the corner of Sixth and Main.

Q. And who were present?

A. Present at the time was the main spot man and myself.

Q. Will you state what he said to you, and what you said to him?

A. Well, he said "Here's this cap. The boss says to put it on."

Q. Was anything further said?

A. I believe I made some remark about the cap. I—— [1685]

The Witness: I made some slight objection to wearing it, but I wore it.

Q. (By Mr. Mouritsen): Who did you understand by his reference to "the boss"?

The Witness: Abe Pierce.

(Testimony of John Deering.)

Q. (By Mr. Mouritsen): While you were on this spot—that is, in front of the P. E. Depot—during what hours did you operate?

A. I started to work at approximately 6:00 o'clock; worked until 12:30 week days and with the Sunday papers we started approximately 2:30 Saturday afternoon and finished 1:00 o'clock Sunday morning. Of course, on holidays the paper usually [1686] came out an hour or two earlier.

Q. Did anyone ever say anything to you about the time that you were to cease operating, the hour at which you were to cease operating?

A. They did. [1687]

Q. Who was that?

A. The main spot man.

Q. And about when did he first say anything to you regarding that?

A. The first night that I sold papers at that place.

Q. And who were present when he said anything to you regarding that?

A. Well, there was a Times newsboy on that same corner with the main spot man, but I don't know whether or not he listened in to the conversation.

Q. What did he say to you at that time, and what did you say to him?

The Witness: I asked the main spot man how long I was supposed to work on that corner, and he said to quit at 12:30 when the station closes up.

(Testimony of John Deering.)

Q. (By Mr. Mouritsen): And after that time, did you check in at approximately that time?

A. Yes, sir.

Mr. Hall: If the Examiner pleases, I move to strike now those portions of the testimony of John Deering in which he [1688] has testified to conversations with the main spot man, a man that he testifies was located at Sixth and Main Streets, those conversations having to do specifically with the point on the sidewalk where Mr. Deering was to stand; the conversation in which Mr. Deering was told not to sell newspapers in front of the drug store; the conversation in which Mr. Deering was told by the main spot man to wear a cap resembling a Legion cap and the conversation in which Mr. Deering was told by the main spot man that he must remain in front of the depot during a certain period; my motion being based upon the ground that no proper foundation has been laid for any of those conversations, that they are hearsay, that there is nothing in the record that shows that those conversations or any of them are binding upon the Los Angeles Examiner, and upon the ground that they are irrelevant and immaterial.

In connection with my objection I call attention to the fact that this main spot man has not been identified by name; that if we were desirous of producing that main spot man there is no data in the record upon which we could base an application for a subpoena duces tecum. I call attention in connec-

(Testimony of John Deering.)

tion with this objection to the further fact that there is no testimony in the record showing that the main spot man was authorized to give any instructions or directions on behalf of the Los Angeles Examiner, or that the main spot man [1689] was not himself, as is the contention of the Los Angeles Examiner, an independent contractor. [1690]

Trial Examiner Kennedy: I am sure that it is impossible to attest this testimony unless we take a deposition of John Doe in Minneapolis, and I do not think we are going to do that, so I will grant the motion to strike.

Mr. Mouritsen: Including that portion of it, Mr. Examiner, wherein this witness—of the first conversation where this witness, Pierce and the main spot boy were present?

Trial Examiner Kennedy: No, I do not think the motion went to that. If it did, I did not so understand it. [1691]

Mr. Mouritsen: And of course the motion is not granted as to any conversations that the witness had directly with Pierce?

Trial Examiner Kennedy: No.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony given by the witness John Deering is not appli- [1692] cable to the Los Angeles Times?

Mr. Mouritsen: Yes. John Deering, did you say?

(Testimony of John Deering.)

Mr. Cosgrove: I thought it was Beering.

Mr. Mouritsen: Deering.

Mr. Compton: May the same stipulation be made on behalf of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: May the same stipulation be made on behalf of the Stockholders Publishing Company?

Mr. Mouritsen: It may be so stipulated. [1693]

ROY ELEY

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Trial Examiner Kennedy: You have already been sworn.

Q. (By Mr. Mouritsen): Mr. Eley, I believe you testified earlier that at one time you held the position of Chairman of the Organizing Committee of the Union, is that correct?

A. That is correct.

Q. And during what period was that?

A. From the first Sunday in August until, I believe, the first Sunday in January; the first Sunday in August of 1939 until the first Sunday in January of 1940.

(Testimony of Roy Eley.)

Q. During that period, did you make any efforts to organize newsboys selling Los Angeles Examiner other than in the City of Los Angeles? [1694]

A. Nothing, only within Glendale.

Q. This is with reference to the Los Angeles Examiner.

A. Oh, to the Examiner. No.

Q. And to your knowledge, were any efforts made by any other officer of the Union with reference to the organization of the Los Angeles Examiner newsboys other than in the City of Los Angeles?

A. Not that I know of.

Q. Did you attend the meetings, the general membership meetings, of the Union during that period? A. I did.

PATRICK COMORRE

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Comorre, I believe you testified earlier when you were on the stand that you were the organizer for the Newsboys Union? A. That is right.

Q. And during what period were you organizer? [1695]

(Testimony of Patrick Comorre.)

A. About July, '38 to July, '39.

Q. During that period, did you make any efforts to organize newsboys for the Los Angeles Examiner other than those within the city limits of Los Angeles?

A. I didn't make any efforts, no.

Q. Do you know of any efforts to organize Los Angeles Examiner newsboys by any other officials of the Union except within the city limits of Los Angeles?

A. No. I don't think there was any attempt ever made?

Mr. Mouritsen: There was one additional matter, Mr. Hall, with reference to an answer, I believe, to Board's 20, I believe it was—Board's 19.

Mr. Hall: Board's 19, yes, Mr. Mouritsen.

I will stipulate this, if you desire it: That A. F. Logan, to whom this letter, Board's Exhibit 19 was addressed, would if he were called as a witness testify that he did not reply to this letter either verbally or in writing. [1696]

ROY ELEY

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Eley, I show you Board's Exhibit 19, and I will ask you if after you sent that letter you ever received a letter or a verbal reply to Board's Exhibit 19 after that time? [1697]

The Witness: The only reply that was ever received to that letter was several telephone communications that I had with the switchboard operator, and I was advised that there was no way that I could possibly contact Mr. Logan or anybody to represent him.

Q. (By Mr. Mouritsen): I believe you have already stated that you have held the position of acting secretary? A. Yes.

Q. Up until what time?

A. Up until the first Sunday of January, 1940.

Q. To your knowledge, has any reply been received by the Union since January 1st, 1940?

A. None whatever, to my knowledge. [1698]

Trial Examiner Kennedy: What about this matter referred [1700] to in the telegram I read this morning?

Mr. Mouritsen: Well, I think, Mr. Examiner,

after considering the telegram, I think we have been doing just what the Chief Trial Examiner has indicated in his telegram, taking evidence to show that these persons who the Union claims signed the cards are employees, and the evidence that has been taken has been taken to indicate what the newsboys as a class do.

Trial Examiner Kennedy: That is not what he says in the telegram. He says that evidence should be introduced to show what each individual does.

Mr. Mouritsen: Well, I think we have, Mr. Examiner.

Trial Examiner Kennedy: Well, I don't think so.

Mr. Mouritsen: Well, now——

Trial Examiner Kennedy (Interrupting): We have certainly heard about situations of maybe a dozen, but not 220.

Mr. Mouritsen: Well, here is the situation, Mr. Examiner, and the way that I understand the telegram—I would be happy if the Examiner would indicate to me wherein my understanding might be incorrect—as I understand the purpose of presenting the cards is to indicate that a question concerning representation has arisen; in other words, that a sufficient number of people have indicated or have designated the Union as their bargaining agent; and that in order to save time and to obviate holding an election at the hearing, [1701] that that procedure has been adopted. But the purpose is to show that a question has arisen concerning representation. So that if, for instance, a Union should

come in and claim only that, say, 10 people out of a claimed 250 had designated it, that that would not be a sufficient showing that a question had arisen; that cards are presented to show some basis for their claim that a question concerning representation has arisen.

Now, in the petition, I think the number of people within the claimed unit as set out is some 300 men. The Union claims that approximately 221 have designated the Union as bargaining agent.

Trial Examiner Kennedy: It seems to me that there is a gap here in the record; that is, we have testimony on a certain number of newsboys as to what they do, and I don't [1702] know how many have testified in the Los Angeles Examiner case, but I do not think it is more than a dozen; and we have 221 cards that I have examined. There is nothing to show that any one of that possibly dozen of names appears on any one of the 221 cards; and there is nothing to show just how many persons are in this definition of "unit"; and there is nothing to show how many of the 221 signatories are in that unit.

That objection and that observation might also apply to the Los Angeles Times case, because, although we have a list there, we have no designation of exactly how many persons on that list are in the claimed unit.

As to the News and the Herald cases, I believe that there was an indication from the list how many were in the claimed unit. I do not see anything wrong about that.

So we do not have the same kind of a record in the Los Angeles Examiner case as we did in the other three cases; and, as I read the telegram from the Chief Trial Examiner, he wants to know, or he says the record should show what each individual does. And I do not believe that by showing what 12 individuals do would show what the 221 individuals do, or 350 or 310. I believe that it would be a rather violent inference to jump from 12 or 15, or whatever it is, to 221.

That is my observation on the matter. I suppose that one way it could be handled, we could have some one testify [1703] as to the names on each one of these 221 cards and as to what they do, if they know.

You see, another thing in checking these cards before, we found a great many signatories who were not in the claimed unit, that is, by comparing the cards with the lists. For example, in the L. A. Times case, almost half the signatories were not on the list at all.

Mr. Mouritsen: Well, that, of course, could be explained by a number of factors, including the dates, for example, when the petition—not the petition, but the list, was prepared, and the times when the cards were signed. But I——

Trial Examiner Kennedy (Interrupting): You appreciate, of course, that in the ordinary representation case where there isn't any denial of the employer-employee relation, generally the payroll is forthcoming without any question and it is a very

simple matter to establish by inspection that the names of the persons on the cards are the same as the names of the persons on the payroll. Well, we haven't that, or such a parallel matter here. That is the point.

Mr. Mouritsen: Well, I think——

Trial Examiner Kennedy (Interrupting): And apparently I would say that at least the Chief Trial Examiner thinks it important.

Mr. Mouritsen: I suggest that we perhaps proceed with the record as it now is, and if the question is not covered, [1704] if it has not been sufficiently indicated that the question concerning representation has arisen, which I anticipate has been demonstrated by a number of other factors as well as these cards, then I think the Board could have the case reopened and designate, indicate for what purpose and along what lines they desire further information.

Trial Examiner Kennedy: Of course, the alternative is that the Board will dismiss the petition. I hope the Petitioner understands that, too.

I think under the circumstances, Mr. Mouritsen, that you had better communicate with your superiors in Washington and get their advice on the subject, because it is certainly not the policy of the Board to have a series of hearings.

Mr. Mouritsen: Well, I appreciate that, Mr. Examiner.

Trial Examiner Kennedy: And it is also not the policy to get a record up in such shape that be-

cause something is not done at a hearing that could have been done, the petition is dismissed. I am sure the Petitioner would not want that done and I do not believe that the companies would like to come back in here for the further hearing at some other time.

Mr. Mouritsen: Let me then understand what the Trial Examiner's idea is on what further evidence should be put in, or the type of evidence.

Trial Examiner Kennedy: Evidence should be introduced to show what each individual does. Now, I do not think that [1705] has been done.

Mr. Mouritsen: I see. Then in order that I may understand the Trial Examiner fully, for example, in the Examiner case, some evidence respecting what these 221 card signers—the type of operations in which they engage should be introduced in the record?

Trial Examiner Kennedy: That is my interpretation of the telegram that I received from Mr. Pratt. I suppose it is possible one witness could do that—maybe it would take ten witnesses and it might take 221. I don't know.

Mr. Mouritsen: I will see what can be done in that regard, Mr. Examiner. However, I would have to consult with the Petitioner at some length to ascertain more fully just what is available and what can be secured very shortly.

Trial Examiner Kennedy: Yes. And I also suggest that you communicate with Washington, Mr. Mouritsen, and find out what their views on that are.

Mr. Mouritsen: I see. [1706]

NICHOLAS VOLANTY

called as a witness by and on behalf of the Respondent, the Los Angeles Examiner, being first duly duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hall): Mr. Volanty, what is your business or occupation?

A. It is P. M. street manager, Los Angeles Examiner.

Q. How long have you been P. M. street manager for the Los Angeles Examiner?

A. About five years.

Q. What are the boundaries of your district?

A. Ninth Street to Hollywood Boulevard, Normandy to Franklin, Gower to Sunset, back down on Sunset, and I believe my last spot is at Sunset and Gower.

Q. Has that been your district for at least a year last past? [1707]

A. Longer than a year.

Q. Are you acquainted with a man named Charles Seklemian, S-e-k-l-e-m-i-a-n?

A. Yes, sir.

Q. Does he sell Examiners within your district? A. Yes.

Q. Does he sell them at a spot at Sunset and Western? A. Yes.

Q. By the way, in referring to this man we mentioned, what do you usually call him?

A. Oh, he is generally known as "Bushy."

Q. Bushy? A. Yes, sir.

(Testimony of Nicholas Volanty.)

Q. Then, if the Examiner please, I will call him "Bushy" because I find it impossible to pronounce his last name.

Did you have a conversation with Bushy last Friday evening, which would be June 21, 1940?

A. Well, I have a conversation with him every night.

Q. Do you remember a conversation with him last week in which there was mention made of the number of Peach editions that he had sold?

A. Yes.

Q. When, to your observation, did that conversation occur?

A. About 25 minutes of 10:00.

Q. Do you remember the day? Can you place the day? [1708]

A. Not necessarily. It could be most—I think it was Friday. I am pretty sure it was Friday.

Q. Friday night? A. Yes.

Q. What did you say to Bushy and what did he say to you at the first conversation you had with him that night?

Mr. Mouritsen: Could we have the place fixed?

Q. (By Mr. Hall): Where did this conversation occur?

A. At Sunset and Western.

Q. All right. What was said?

A. I believe I asked him how many he had left. He told me 26 or 29; I don't remember exactly which one it was. I told him I thought that was

(Testimony of Nicholas Volanty.)

quite a few out of the 50. He ordinarily sold approximately 50 and he would have six, seven, eight, nine or ten, or any number left, and I told him I thought that was an awful lot of papers. I said "Here's some Double C's"—that was the edition I was delivering at the time—"Do the best you can with what you have got left. I'll be back and pick them up later, whatever you don't sell."

Q. Was that all the conversation you had with him?

A. At that time I believe it was.

Q. Did you refuse at that time to trade him Peaches for Double C editions?

A. I gave him Double C editions and told him to do the best he could with the Peaches, and I would be back later to pick [1709] them up, about 10:00 or 10:15 or 10:20, whichever time I could make it.

Q. Did you have another conversation with this man at about 10:20 or 10:30 at the same location?

A. Yes.

Q. Did you in the course of that conversation say to him "So you put me behind the eight ball"?

A. No.

Q. Did he in the course of that conversation say to you, "What do you mean"? A. No.

Q. Did you in the course of that conversation say to him "You know what I mean"?

A. No.

Q. Did he in the course of that conversation

(Testimony of Nicholas Volanty.)

say, "Well, just explain yourself. You have no business to go shooting off your mouth"?

A. No.

Q. Did he say, "Now, wait a minute. I haven't shot off my mouth. Furthermore, I haven't done anything to hurt you"? A. No.

Q. Did you say "Yes, you have"?

A. No.

Q. Did he say then, "Well, what is it"?

A. No. [1710]

Q. Did you then say that he had got you behind the eight ball? A. No.

Q. Did you say, "If you don't watch your step, I'll have you behind the eight ball"? A. No.

Q. Did he then say, "Well, I still don't get what you mean"? A. No.

Q. Did you last week have any conversation with this man in which getting behind the eight ball was mentioned? A. No.

Q. Did you have any conversation with him last week in substance and effect like that which I have just read you? A. No.

Q. Did you on that occasion say to this man, "Don't forget. I'm your boss"? A. No.

Q. Did you in any conversation with that man that evening say, "You are an independent dealer, I bring your papers, you buy them off of me, you sell them. Don't forget I'm still your boss"?

A. No.

Q. Did any conversation like or similar to that

(Testimony of Nicholas Volanty.)

occur between you and this man at any time last week? A. Yes. [1711]

Q. When?

A. About 1:30 he asked me how much he had paid for his papers. I told him he paid 3 cents.

Q. Did you in the course of that 1:30 conversation tell him you were his boss? A. No.

Q. Did you ever tell that man that you were his boss?

A. I don't ever remember telling him anything like that, no.

Trial Examiner Kennedy: You spoke of a 1:30 conversation. What day was that?

The Witness: That was Friday he asked me that question.

Trial Examiner Kennedy: This last Friday?

The Witness: (No response.)

Q. (By Mr. Hall): That would be 1:30, would it not, on Saturday morning?

A. That is right.

Q. You did have a conversation with him about that time? A. Yes.

Q. Did you in the course of that conversation say, "Well, you are an independent dealer. I bring your papers and you buy and you sell them"?

A. I didn't tell him like that, no, that I know of.

Q. What was the conversation?

A. Well, he asked me how much he paid for his papers. I [1712] told him 3 cents apiece. I believe that is all I told him.

(Testimony of Nicholas Volanty.)

Q. Did you at that conversation you had with him at 1:30 on last Saturday morning threaten him?

A. No.

Q. Did you tell him you were going to hurt him?

A. No.

Mr. Hall: Take the witness.

Oh, just pardon me a moment, will you please?

Q. Did you at any time during September of 1939 pay anyone $4.50 or any other sum of money to take the place of this Bushy on that corner?

A. I never paid nobody $4.50 at any time.

Q. Then as I understand your testimony, you never paid any [1713] money at any time to any substitute or any other hustler, is that right?

A. No, sir.

Mr. Hall: All right. That is all.

Trial Examiner Kennedy: Now, wait a minute. Counsel asked you if that was right, and you said "No, sir." What did you mean?

The Witness: He asked if I had ever paid—at any time if I had ever paid anybody any money, at that time or any other time, and I answered No, sir, I never paid him any money.

Trial Examiner Kennedy: Cross examine.

Mr. Hall: I think the record is pretty clear now, your Honor. Thank you.

Cross Examination

Q. (By Mr. Mouritsen): How many editions of the paper do you take around that district?

A. On what day?

(Testimony of Nicholas Volanty.)

Q. On a week day?

A. On a week day? We have as a general rule four editions.

Q. What are they?

A. First, Peach; Second, Peach; Double CC and Three CCC midnight.

Q. Do you leave copies of each of those editions with Bushy every week night?

A. Yes, sir. [1714]

Q. You see him about four times a night?

A. More than that.

Q. On Saturday, do you see him oftener than that?

A. Wait a minute. About the same number.

Q. On Sunday any different?

A. Sunday it varies a little bit. Yes and no.

Q. Some two or three weeks ago, didn't the Sunday papers start to come out about an hour earlier than they had been coming out?

The Witness: The Sunday papers come out at the regular time.

Q. (By Mr. Mouritsen): I will ask you if the papers which come out Sunday did not start to come out an hour or so earlier than some, two or three weeks ago? A. Yes.

Q. How many newsboys do you have in your district?

A. I have a different number.

Q. On week nights, I mean?

A. Well, they vary. It is all according to how many they sell.

(Testimony of Nicholas Volanty.)

Q. Take the last week. How many newsboys on an average did [1715] you have each night?

A. Different nights I have a different number.

Q. And week nights you have a different number? A. Yes.

Q. How much does that vary?

A. All according to how many show up and how many do not show up.

Q. How many spots do you supply with papers in your district?

A. I couldn't say right off-hand.

Q. Do you have any idea at all?

A. Yes.

Q. How many? A. About twenty.

Q. Do you understand the use of the term "main spot"? A. Yes.

Q. How many main spots do you have?

A. Twenty.

Q. How many off spots?

A. I couldn't say.

Q. Have you no idea? A. Yes.

Q. How many? A. Around thirteen.

Q. And was there any variation last week in the number of your main spots? [1716]

A. No.

Q. Was there any variation in the number of boys who worked on those main spots?

A. No.

Q. Do you have any traffic spots?

A. Yes.

(Testimony of Nicholas Volanty.)

Q. About how many?

A. About fifteen or sixteen.

Q. And what do you understand by a "traffic spot"?

A. That is a man who stands out in the traffic, in the middle of the street, or any place he wants to out there, and sells papers.

Q. Now, with Bushy, you see him an average of four times a night on week nights; is that correct?

A. Sometimes more.

Q. Well, you see him about 28 times a week, at least; isn't that correct?

A. Sometimes more, sometimes less.

Q. Do you recall any other conversation you had with him last week? A. On a Friday?

Q. No. Any part of the week?

A. I talk to him every night.

Q. You have a conversation with him every night; is that correct? [1717]

A. Yes.

Q. Sometimes more than one?

A. Sometimes five or six.

Q. And you are certain that last week you do not recall any conversation in which getting behind the eight ball or being behind the eight ball was discussed? A. No.

Q. How about Saturday? A. No.

Q. How about the week before that?

A. No.

Q. What you are trying to say is that you do not recall having had the conversation?

(Testimony of Nicholas Volanty.)

A. What I did say is that I didn't say anything about an eight ball to the man.

Q. I see. You are sure of that?

A. Yes, I am sure of it.

Q. Do you recall anything that you said in any of these conversations with him, any one of these, when you spoke with him last week?

A. Why, Friday night I told him that Saturday, this coming Saturday, I would like to have my money on the Double C edition and the Three C edition, and to give me all the money he could at that time; he could give me $3.00, $4.00, $5.00, $2.00, $8.00—anything he wanted to; and the next edition was the [1718] same thing.

Q. And that had been a change—strike that.

Prior to that time you had been checking in at the end of the evening; is that correct?

A. Not every evening.

Q. Well, on most evenings he had; is that correct.

A. Not most evenings. Any night that he might have too much money or he couldn't get rid of his silver or anything, I might ask him for a little money.

Q. How did the some twenty newsboys find out that the paper was going to change, the paper that comes out on Sunday was going to come out an hour earlier?

A. It was posted on the bulletin board.

Q. Where? A. At the Examiner alley.

(Testimony of Nicholas Volanty.)

Q. Do all of those boys ride with you from the Examiner alley? A. No.

Q. How many of them do?

A. I couldn't say right off-hand.

Q. How many do you usually take?

A. I couldn't say.

Q. Any idea? A. No.

Q. Do you take one? [1719]

A. Sometimes I don't take any.

Q. Do you sometimes take one?

A. Sometimes I don't take any.

Q. Sometimes you don't take any. Sometimes do you take one newsboy out with you?

A. Sometimes I don't take any.

Q. Did you ever take more than one?

A. Yes.

Q. How many? What is the largest number you can recall having taken with you within the last year?

A. As a rule—I don't recall ever taking more than one or two.

Q. Do you ever recall having taken more than two? A. No.

Q. Do these other newsboys whom you do not take out, do they come down to the Examiner alley before they go out to their spots?

A. Sometimes.

Q. And where in the—strike that.

These main spot boys that you have in your district, are they, as a general rule, older men?

(Testimony of Nicholas Volanty.)

A. They can be any age.

Q. Do you have any young schoolboys——

A. (Interrupting) No.

Q. (Continuing) ——working those main spots? [1720]

A. No.

Q. In the main, they are older, more mature men, aren't they?

A. Some are young and some are old.

Q. They are all men? A. Yes.

Q. And some of them—have you put any on recently, on those main spots? A. Yes.

Q. How recently?

A. Oh, maybe two weeks.

Q. Do you recall who, or the spot you put this man two weeks ago?

A. Yes. Beverly and Western.

Q. How many off spots are there around Beverly and Western? A. Two.

Q. Did this man ever work on the main spot before? A. Yes.

Q. In your district? A. Yes.

Q. Where had he worked before?

A. Different spots.

Q. Did you change him around a number of times?

A. I put him any place that happened to be open.

Q. How long have you been in that district? [1721]

(Testimony of Nicholas Volanty.)

A. I think it is three years or four years—three years.

Mr. Mouritsen: I think that is all.

Redirect Examination

Q. (By Mr. Hall): You did not tell those boys that rode out from the alley with you that they had to ride with you, did you? A. No, sir.

Q. You did not tell this man that took that main spot at Beverly and Western that he had to take that spot, did you? A. No, sir.

Q. Did you ask him to take it?

A. Well, the spot was open for the evening, I think it was, and later on the man that had worked there regularly quit. He heard about it and he came down to the alley and asked me if he could have that spot; he would like to have it. I told him I didn't see any reason why he shouldn't have it, and I told him how many papers the corner ordinarily sold; and I told him if he would like that spot, I would be glad to give it to him. [1722]

Q. Is it or is it not true that, as a general practice, you will check in oftener at a given spot with respect to sales of a Sunday paper than you will with respect to sales on a daily paper?

A. With respect to sales of the Sunday paper, your bill can be as much as six, seven, eight, or according to how many they sell, that much more money on a Saturday than there would be on a week day. [1723]

(Testimony of Nicholas Volanty.)

Q. (By Mr. Hall): Is it true that, as a general practice, and referring to a given spot, the sales, the money from sales of a Sunday paper will be very much larger than they will from the sales of a daily paper? A. Yes. [1724]

Q. As a matter of practice, isn't it a fact that, since the hustler is collecting more for the sales of the Sunday papers, you collect it from him more frequently—— A. Yes.

Q. (Continuing) —— for the Sunday sales than you would on daily sales? A. Yes.

Q. That is a matter for your own protection, isn't it? A. Yes.

Mr. Hall: That is all.

Trial Examiner Kennedy: Anything further?

Recross Examination

Q. (By Mr. Mouritsen) Mr. Volanty, you are the only person in your district who puts newsboys on the corners for the purpose of handling the Examiner, are you not?

A. I don't understand that.

Q. Does anyone else put Examiner newsboys on the corners in your district? A. No.

Mr. Mouritsen: You may inquire.

Mr. Hall: You may step down, sir.

Trial Examiner Kennedy: Just a minute.

What does this expression, "behind the eight ball" mean to you?

The Witness: I imagine that could mean most anything, [1725] one pool ball behind the eight ball.

(Testimony of Nicholas Volanty.)

Trial Examiner Kennedy: What does it mean when it is used towards an individual?

The Witness: Well, if I used that expression behind an individual why I would imagine that he was behind a colored man.

Trial Examiner Kennedy: Behind what?

The Witness: A colored man.

Trial Examiner Kennedy: A colored man?

The Witness: A colored man; behind a black man.

Trial Examiner Kennedy: Do you ever use that expression?

The Witness: I don't remember.

Trial Examiner Kennedy: You never remember using it at all?

The Witness: Oh, I may have used it and then forgot about it.

Mr. Cosgrove: May it be stipulated that the testimony of the witness Nicholas Volanty has no application to the Los Angeles Times' case, Mr. Mouritsen?

Mr. Mouritsen: That may be so stipulated.

[1726]

Mr. Compton: May the same stipulation be made on behalf of the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: And the same stipulation

with respect to the Stockholders Publishing Company, Mr. Mouritsen?

Mr. Mouritsen: It may be so stipulated. [1727]

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 1:30 o'clock p.m.)

ABRAHAM PIERCE

called as a witness by and on behalf of the Respondent, Los Angeles Examiner, being first duly sworn, was examined and testified as follows:

Q. (By Mr. Hall) You are one of the district men in charge of night sales for the Los Angeles Examiner, are you, Mr. Pierce? A. I am.

Q. How long have you been a district man acting in that way? A. Oh, going on five years.

Q. So far as night sales are concerned, what is your district? A. Main Street.

Q. Main Street, Los Angeles City? [1728]

A. Yes, Los Angeles.

Q. Is there now a man at Eighth and Main Streets selling editions of the Los Angeles Examiner after 6:00 o'clock at night?

A. I have at the present time.

Q. At the present time? A. Yes.

Q. How long has there been a night news seller selling Los Angeles Examiners at that location?

A. Since 1939.

(Testimony of Abraham Pierce.)

A. Yes; just about before Santa Anita opens up.

Q. Well, Santa Anita opened up in the late fall or early winter of 1938, let us say December, 1938?

A. Correct.

Q. And it was about that time that there was for the first time a new vendor selling Los Angeles Examiners at that location; is that right?

A. I had a woman there selling newspapers there.

Q. Yes; that is correct, is it? A. Yes.

Q. The first person, then, that I understand that was selling papers there was a woman?

A. Correct. A woman with crutches.

Q. A woman with crutches? [1729]

A. Yes, sir.

And she started to sell papers at that location in December of 1938; is that right? A. Correct.

Q. Did that woman stop selling her papers at that location? A. She did.

Q. Did somebody else then commence selling Los Angeles Examiners at that location?

A. Yes.

Q. Who was that?

A. The man that I have there at the present time.

Q. The man that is there at the present time?

A. Yes, sir.

Q. So that if I understand your testimony correctly, during the five years that you have been district manager, there have been only two people

(Testimony of Abraham Pierce.)

selling Los Angeles Examiners after 6:00 o'clock in the evening——

A. (Interrupting) Correct.

Q. (Continuing) ——at that location?

A. Yes.

Q. One of those persons is a woman and one is the man who is selling there at present?

A. Correct.

Q. Am I right about that?

A. Correct. [1730]

Q. Now, during the month of May, 1938, did you tell any hustler that if he would stay at any location, you would guarantee him a dollar a night?

A. No, I have not.

Q. Did you ever tell a hustler that?

A. No.

Q. Did you ever tell a hustler that he was not to handle the Los Angeles Times?

A. No, I have not.

Q. Did you ever give a hustler a dollar out of your own pocket when he had not earned it because of some guarantee you made? A. No.

Q. Is it true that the hustlers in your district get their money from what they make, the difference that they make between what the papers cost them and what they sell them for? Is that the way they make their money? A. Yes.

Q. You do not give any hustlers any money?

A. No.

Q. You have not in the past?

A. No, I never have.

(Testimony of Abraham Pierce.)

Q. Did you ever tell anyone that you would have to or he could not sell Los Angeles Examiners any more at Eighth and Main Streets because you were going to put back on that spot [1731] the lady that had had it?

A. No, I haven't. The first time I have opened up the corner was a lady with crutches, and then I put a man, and I have a man at the same time, the present man.

Q. Did the lady with crutches finally quit selling papers at that corner of her own accord?

A. Of her own accord.

Q. And the man who then started selling papers at that location is the man who is there now; is that right? A. Correct.

Q. Do you remember taking a man around in your car, looking for a spot or location, and finally telling the man that the only spot that you had or where he could sell papers was a bus station at Sixth and Main Streets?

A. I never take anyone in my car.

Q. Did you ever tell a hustler that he could sell Los Angeles Examiners at a bus station at Sixth and Main Streets and——

A. (Interrupting) No.

Q. You never did? A. No.

Q. Well, did you ever tell a man that if he would sell the papers at that or any other location, you would give him 15 papers and 50 cents if he would stay there? A. No.

(Testimony of Abraham Pierce.)

Q. Is there a spot where there is a man selling Los Angeles [1732] Examiners, the bus station at Sixth and Main Streets?

A. There is one at Sixth and Main and one at Sixth and Los Angeles, also, two bus depots.

Q. What corner is that at Sixth and Main?

A. Sixth and Main is the P. E. Depot, or a red car.

Q. Well, that is not a bus station?

A. No. And the bus station is at Sixth and L. A., the Greyhound.

Q. The bus station is Sixth and Los Angeles?

A. That is correct. Not at Sixth and Main.

Q. When I spoke to you about the opening of Santa Anita in December, 1938, you did not understand that I was referring to the first time Santa Anita opened up for racing, did you?

A. No. The first time——

Q. (Interrupting) As a matter of fact, Santa Anita first opened up for racing several years before that, didn't it?

A. Yes, but what I am trying to have understood, the first time I opened the corner was in 1938, in November, the last part of November. I put an old woman there, crippled, with crutches.

Q. You are referring now to the corner at Eighth and Main Streets?

A. Eighth and Main, correct.

Q. Do you know a man named Celestino Sanchez?

(Testimony of Abraham Pierce.)

A. Well, I don't know his last name. I know him by his [1733] first name.

Q. What do they usually call him?

A. Solly.

Q. Solly? A. Correct.

Q. He used to sell Los Angeles Examiners down at the old Southern Pacific depot, didn't he?

A. Correct.

Q. After that, he sold Los Angeles Examiners at Fifth and Main Streets, didn't he?

A. Correct.

Q. Did you ever say to Mr. Celestino Sanchez, otherwise known as "Solly," while he was selling paper at Fifth and Main Streets, that he would be supposed to distribute Los Angeles Examiners to off spots at First, Second, Third and Fourth Streets on Main Street?

A. No. I give them all out myself, individual.

Q. Has that been your practice for the last couple of years?

A. Ever since I have been down there in the last four years.

Q. In other words, you distribute to those spots I have just mentioned, yourself?

A. Myself, personally.

Q. During any of the time that Mr. Sanchez was selling Los Angeles Examiners at the old Southern Pacific depot, did you tell him that he must stuff any papers? [1734] A. No.

Q. What do you understand by the expression "stuffing papers"?

(Testimony of Abraham Pierce.)

A. Stuffing the papers? Well—insert papers inside of the paper.

Q. Putting an insert in the paper?

A. Correct.

Q. Now, do you recall the time when the American Legion Convention came to Los Angeles?

A. Correct.

Q. It has been referred to in this hearing as occurring in September of 1938. A. Correct.

Q. Do you recall that there was some kind of a supplement or insert published in connection with the Los Angeles Examiner at that time?

A. There was.

Q. Did you tell this Mr. Sanchez to stuff that supplement in the papers before he sold them?

A. No, I have not.

Q. Will you tell us about that situation and just what was done with respect to that supplement?

A. Well, we expected Mr. Hearst's organization of the American Legion from New York, and I was there present, I was giving them out myself individually, and papers also—— [1735]

Q. (Interrupting) This supplement, you mean?

A. Yes. It was never in any papers at all. I seen that everyone got one individual.

Q. In other words, those supplements were given to those various people separate from the Los Angeles Examiner newspaper itself; is that correct?

A. Correct. I was giving them myself.

(Testimony of Abraham Pierce.)

Q. At the time of that convention did you tell Mr. Sanchez that he must deliver a lot of papers free to a certain delegation that came in on the train?

A. No. I have not said anything like that at all.

Q. Did he do that? A. No, he had not.

Q. He had nothing to do with that?

A. Nothing to do with that whatever.

Q. At or near the corner of Fifth and Main Streets, did you ever say to Mr. Sanchez anything like this, in substance or effect: "Jesus Christ, Solly, you shouldn't get off the spot. Don't you know that we have got checkers around here, and if they catch you off the spot, that will mean my job, and I will have to let you go"?

A. I never said anything to the man at all. He went to his own corner work. I never said boo to him.

Q. Did you at any time while Mr. Sanchez was working at Fifth and Main Streets say to Mr. Sanchez at or near Fifth [1736] and Main Streets, in substance or effect, the following: "The spot has got to be covered, regardless of whether there is one paper sold here"? A. No.

Q. You did not say that? A. Not at all.

Q. You didn't say anything like that?

A. No.

Q. When Mr. Sanchez was selling Los Angeles Examiners at Fifth and Main Streets, tell us how you handled the matter, as far as you were concerned, of these advertising placards or war maps?

(Testimony of Abraham Pierce.)

A. Well, when anything would come up like that, why I would take them and keep them in the car myself, and when I got through with my work, why I took them around to the different boys that was on the corner, or laid them down myself, or would hang them up myself on the corners, on the posts, on these lights.

Q. Did you ever say to Mr. Sanchez while he was selling Los Angeles Examiners at or near Fifth and Main Streets anything like this in substance of effect: "Be sure that these placards are on display, and that these maps have to be returned at the end of the night"? A. No.

Mr. Hall: You may take the witness. [1737]

Cross Examination

Q. (By Mr. Mouritsen) Mr. Pierce, how many issues of the paper do you handle on a week-end?

A. Four.

Q. You have stated that your district is Main Street; is that correct? A. Correct.

Q. And between what boundaries?

A. All the way from Ninth Street to Market Street, and right in front of this building here in back.

Q. From Ninth?

A. To here and Market Street.

Q. And how many main spots do you have on that Street?

A. They are all main spots, as far as I know.

Q. How many are there?

(Testimony of Abraham Pierce.)

A. Well, I don't keep track of how many they are. I distribute my papers to them.

Q. You have no idea how many main spots there are in that area? A. No.

Q. Do you understand what a "main spot" is?

A. It is a spot, that is all I know, whether it's the main spot or not. I know there is a boy there selling papers; that is all I know; it's a spot.

Q. About how many spots do you have in that area? [1738]

A. Well, I don't know exactly. I never did keep track of them.

Q. Do you have any idea?

A. No, I haven't.

Q. Do you have any idea how many stops you make a night to put down papers?

A. I make a lot of stops.

Q. Do you have any idea how many stops you make a night on one edition, to put out papers on one edition? A. Maybe sixty or seventy stops.

Q. And at each of those stops, you put out papers for newsboys?

A. No, not exactly. I stop at the red light and the green light and boulevard stops.

Q. At how many places do you stop in that area for the purpose of putting out newspapers to the newsboys? A. About fifty.

Q. At the corner of Fifth and Main, to how many newsboys do you supply papers on a week night?

(Testimony of Abraham Pierce.)

A. Well, the boys there. I only have to distribute to five.

Q. Do you make more than one stop there?

A. One stop.

Q. Do you throw off the papers at one place?

A. No. [1739]

Q. What do you do there?

A. I call them by their number, Fifth, Fourth, Third, Second and First.

Q. Then what do you do?

A. I give them their papers.

Q. Well, is there only one boy who sells at Fifth and Main? A. Five.

Q. How do you distribute your papers to those boys who sell at Fifth and Main?

A. I give them to them myself, individual.

Q. In other words, the boys from these other corners that you have mentioned come from Fifth and Main and get their papers also; is that correct?

A. No. I go to their corners.

Q. I see.

And which other corners do you go to on Main Street? Do you go to First?

A. I go to First Street and come all the way up here to Market Street.

Q. You make a stop at First and distribute the papers there to the Newsboys on First?

A. No; only one man there.

Q. Give them to one man at First and Main?

(Testimony of Abraham Pierce.)

A. Correct.

Q. And at Second and Main? [1740]

A. The same thing.

Q. Just one man? A. One man.

Q. And at Third and Main? A. One man.

Q. Fourth and Main? A. One man.

Q. Fifth? A. Five men.

Q. And they all work on that corner?

A. They all work on that corner, individual.

Q. How about Sixth and Main?

A. Two men.

Q. And at Seventh and Main?

A. Three men, individual.

Q. Eighth and Main? A. One, individual.

Q. Ninth and Main? A. One, individual.

Q. Do you stop at Temple?

A. No, I don't.

Q. Do you stop at any other place other than the corners I have enumerated; that is, from First and Main to and including Ninth and Main? [1741]

Q. (By Mr. Mouritsen): That is, for the purpose of giving newspapers to other newsboys?

The Witness: I do.

Q. (By Mr. Mouritsen): Where else do you stop?

A. All the way down Fifth Street.

Q. All the way down Fifth Street between what boundaries? A. To Central.

Q. And how many corners are there from Main to Central?

(Testimony of Abraham Pierce.)

A. I don't remember exactly how many corners down there at all. I just make about ten stops—five stops along through there.

Q. What is the first street below Main Street? That is Los Angeles, isn't it?

A. Correct. [1742]

Q. Do you stop at Los Angeles? A. I do.

Q. How many newsboys do you give papers to on Los Angeles? A. One individual.

Q. There are no others who sell Examiners on that corner? A. No.

Q. All right.

Now, what is the next street?

A. Oh, I don't know down there, the streets there, there is so many of them.

Q. You have been handling this district for five years; is that right? A. Correct.

Q. You do not know the next street below Los Angeles on Fifth Street?

A. Well, I don't know the names of the streets.

Q. Do you know any of these other streets between Los Angeles and Central at which you stop and give papers to newsboys?

A. All my newsboys get their papers, individual, through me and no one else.

Q. That is what I understand, Mr. Pierce, and I want to see just how definite your recollection is on other matters.

Now, can you tell me how many streets there are between Los Angeles and Central at which you stop

(Testimony of Abraham Pierce.)

A. I don't know how many streets there is down there. I don't count the streets; I just count my papers and give them out to my newsboys.

Q. To your newsboys. All right.

You don't know the streets, then, between Los Angeles and Central where you leave papers for newsboys; is that correct?

A. Why, I know the names of the streets, as far as the streets.

Q. Oh, you know the names of the streets.

Now, tell us the names of those streets where you stop and leave papers with newsboys?

A. Fifth and Wall.

Q. How many newsboys there? A. One.

Q. All right. Next?

A. Fifth and San Pedro.

Q. How many newsboys there?

A. One. Fifth and Crocker.

Q. How many newsboys there? A. One.

Q. Next?

A. And the other one, I give the papers to another boy and he goes down the street, selling them from each side of the street. [1744]

Q. And on what street is that?

A. I give him them and he starts off at Fifth and San Pedro.

Q. Do you operate on any other area other than on Main Street?

A. Seventh; Sixth and Seventh.

(Testimony of Abraham Pierce.)

Q. Sixth and Seventh. Well, now, let us see. On Seventh where do you sell?

A. How is that?

Q. On Seventh, where do you go?

A. Seventh and Central.

Q. And these same cross streets, is that right?

A. Correct.

Q. Los Angeles; Wall, San Pedro and Crocker?

A. Crocker.

Q. On Seventh and Los Angeles how many boys do you distribute papers to?

A. I have none.

Q. Beg pardon?

A. I don't distribute no papers.

Q. Didn't you testify that you distributed papers along Main Street, at first?

A. Yes, but not Los Angeles Street.

Q. At the corner of Seventh and Los Angeles, do you or do you not distribute papers to a newsboy? A. No.

Q. You do not? All right. [1745]

Now, on Seventh and Wall, do you?

A. No.

Q. You do not? A. No.

Q. Well, where do you distribute them on Seventh Street? A. One corner.

Q. Where?

A. Seventh and Central.

Q. No other corners in between?

A. No corners between.

(Testimony of Abraham Pierce.)

Q. And where on Sixth Street do you distribute? A. Sixth and San Pedro.

Q. Just one corner there? A. Correct.

Q. Now, any place else other than on Main Street where you distribute papers to newsboys?

A. No.

Q. You say there are fifty or sixty newsboys within the area that you serve, to whom you distribute newspapers?

A. I never said "fifty or sixty newsboys." I said "fifty or sixty stops." You asked me the stops I make.

Q. Very well.

How many newsboys are there in the area that you handle as district manager for the Los Angeles Examiner? A. I don't know. [1746]

Q. How long, Mr. Pierce, does it take you to make this round, make a single round of your district with one edition of the paper, on an average, making 50 or 60 stops and maybe more for red and green lights?

A. It all depends on how fast I go.

Q. All right.

As a general rule how long does it take you?

A. About two hours.

Q. And then you have four editions a night, is that correct? A. Correct.

Q. And where do you check these boys in?

A. On their own corners.

Q. How long does that take you?

(Testimony of Abraham Pierce.)

A. I don't know how long it takes me. I never kept track of what time it takes.

Q. Where do you check them in?

A. On any of the corners.

Q. Do any of the newsboys check in to you at the Belmont Cafe?

A. Only one corner, Fifth and Main, checks in there.

Q. That is where Sanchez checked in to you, is that correct?

A. I don't know his last name.

Q. Celestino?

A. I don't know even that part of his name. [1747]

Q. You don't know that part of his name?

A. No.

Mr. Hall: Popularly known as "Solly."

Mr. Mouritsen: Well, I was just wondering——

Mr. Hall: I will stipulate Celestino Sanchez is popularly known as "Solly," and will further stipulate that you may use the term "Solly" in examining this witness.

Mr. Mouritsen: I was just trying to find out how the witness knew whom you designated when you designated him as Celestino Sanchez?

Q. Mr. Pierce, do you recall the newsboy known to you as Solly, who operated on Fifth and Main?

A. I do.

Q. That is the name you knew him by?

A. That is the name I knew him by.

(Testimony of Abraham Pierce.)

Q. You did not know his name was Sanchez?

A. No.

Q. You did not know his name was Celestino?

A. No.

Q. During what period did this newsboy known as Solly operate on Fifth and Main?

A. About fifty or sixty days.

Q. During what period?

A. I don't remember exactly what period it was.

Q. Do you remember, approximately? [1748]

A. No.

Q. You have no idea? A. No.

Q. It might have been the first year that you started in this district five years ago; is that correct? A. No.

Q. It could not have been then? A. No.

Q. How about the fourth year? A. No.

Q. Well, you do have some idea then——

A. (Interrupting) I know it was last year, but I don't remember the date or the month.

Q. It might have been January, 1939?

A. It might have been.

Q. Do you know on an average how many miles you cover in making a single round on the district that you have? A. No.

Q. You have no idea of that?

A. No. I have no speedometer on my car.

Q. Do you receive any mileage from the Examiner for the use of your car?

A. I don't know as to that. [1749]

(Testimony of Abraham Pierce.)

During September, 1939, you received certain war maps; is that correct?

A. I don't understand you.

Q. Well, you understood Mr. Hall's reference to certain maps; is that correct?

A. Yes. We get a map—I get it; no one else gets it.

Q. Now, what do you understand Mr. Hall referred to when he asked you about certain maps?

A. I get the maps myself, individual, and put them on the corner myself, individual, and put them around a light pole myself with a piece of wire.

The Witness: And no hustler does that for me at all. [1751]

Q. (By Mr. Mouritsen): At the time that you put Solly on Fifth and Main—prior to that time you say he had been selling at the old S. P. depot; is that correct?

A. I didn't—I didn't put Solly at Fifth and Main at all. They were closing up the S. P. Depot, and the corner of Fifth and Main was open. He came to me and he says, "Abe, how would I—I would like to have Fifth and Main." He says, "It's open."

I just told him how many papers it does and so on. I didn't put him there.

Q. Did you tell him that he could sell on that corner?

A. I didn't tell him he could sell on the corner; I just told him how many papers the corner would sell. That's all I told him.

(Testimony of Abraham Pierce.)

Q. Well, after that time, he showed up and sold at Fifth and Main, didn't he?

A. Correct. He sold at Fifth and Main.

Q. Well, is there any connection with the conversation that you had with Solly and his later showing up and selling at Fifth and Main?

A. No.

Q. No connection between them? [1752]

A. No.

Q. Did you tell anyone else that the corner of Fifth and Main was open?

A. No. He was the only one that asked me.

Q. Well, for what did he ask you?

A. Well, he said he had a family to take care of.

Q. Well, as a matter of fact, he asked you if he couldn't sell at Fifth and Main, didn't he?

A. No, he didn't say that.

Q. What did he say?

A. He asked me, he says, "The corner of Fifth and Main is open," he says, "I wonder if I could have it."

Q. What did you say?

A. I just told him, I said, "It does so many papers."

Q. Is that all you said? A. That's all.

Q. Well, what are your duties, Mr. Pierce, as night district man? What are your instructions? What are you supposed to do?

A. I don't get no instructions. I use my own head for instructions.

(Testimony of Abraham Pierce.)

Q. In other words, at the time when you commenced operating on this district five or more years ago, no one told you what you were supposed to do in that district?

A. Well, that was a different ruling down there than it is [1753] now. Now they don't say nothing to you.

Q. When did they change?

A. They changed hands.

Q. When was that?

A. I don't remember. I don't know that.

Q. What do you mean by "they changed hands"?

A. Well, there is new bosses there than there used to be.

Q. Well, you have no understanding of what you are supposed to do? A. No.

Q. Well, what do you do?

A. I just do my work; that is all.

Q. All right.

Now, what is your work?

A. My work? Just give out my papers to my hustlers on Main Street.

Q. Well, now, where do you get—where did you get the understanding that that was your work?

A. Well, I got that understanding about five years ago.

Q. Do you have any understanding as to whether you are to deliver more than one edition to these hustlers? A. No.

(Testimony of Abraham Pierce.)

Q. In other words, you could just deliver them one or the four editions that you had; is that correct?

A. I just deliver my papers. [1754]

Q. In other words, you do not have to deliver any papers at all to these hustlers; is that correct?

A. I just deliver my papers to them; that is all.

Q. Well, there is nothing compulsory about that?

A. I just deliver my papers to my hustlers; that is all.

Q. Now, on the occasion when you delivered—on the occasion when this supplement for the American Legion came out, approximately how many copies of that did you receive?

A. I don't remember.

Q. Do you have any idea? A. No.

Q. Do you have any idea how many you passed out? A. No.

Q. Do you have any idea of how long it took you? A. No.

Q. Do you have any idea of where you passed them out?

A. Well, I know where I passed them out. Fifth and Central.

Q. Fifth and Central.

You do not know how long it took you?

A. No.

Q. Did anyone else help you to do that?

A. Myself.

Q. Just yourself? A. Yes.

(Testimony of Abraham Pierce.)

Q. Do you recall the—strike that. [1755]

You did not pass any of those out at the S. P. Depot; is that correct?

A. I passed them out myself.

Q. Do you understand the question that I asked you?

A. I answered the question. I answered it to you.

Q. Did you pass any of them out at the S. P. Depot?

A. I passed them out at the S. P. Depot myself.

Q. I see.

Mr. Mouritsen: Nothing further.

Redirect Examination

Q. (By Mr. Hall): As a matter of fact, do you recall that there was a man that worked at the old—that sold Los Angeles Examiners at the old Southern Pacific Depot who later, and during last year, came up and sold Examiners at Fifth and Main Streets; isn't that right? A. Right.

Q. As a matter of fact, it was only one of those men; isn't that right?

A. One of those men.

Q. The old Southern Pacific Depot was located at Fifth and Central, wasn't it?

A. At Fifth and Central, correct.

Q. And that depot was closed up, wasn't it, some time last year when they opened the new Union Terminal? A. Correct. [1756]

(Testimony of Abraham Pierce.)

Trial Examiner Kennedy: Just a minute. Just a minute, Mr. Witness.

Is there a bus station at the corner of Sixth and Main Streets in Los Angeles?

The Witness: No.

Trial Examiner Kennedy: How about the Santa Fe Trailways bus station?

The Witness: I don't know the name of the bus. There is only but one bus depot that I know of. That is at Sixth and Los Angeles, the Greyhound Depot.

Trial Examiner Kennedy: Do you know the Southwest corner on Sixth and Main Streets?

The Witness: The south—that would be the Santa Fe, but I have nothing to do with that.

Trial Examiner Kennedy: You know there is a bus station there, don't you?

The Witness: Well, not at the corner; it is between the block, between Seventh and——

Trial Examiner Kennedy (Interrupting): Is there any bus [1757] station—pardon me.

The Witness: It is between Seventh and Sixth, in the middle of the block.

Trial Examiner Kennedy: The waiting room is on the corner of Sixth and Main; is that not correct?

The Witness: Well, I don't know. I never went over there, to tell you the truth, Mr. Examiner.

Trial Examiner Kennedy: Do you know whether there is a bus station at the corner of Fifth and Los Angeles?

(Testimony of Abraham Pierce.)

The Witness: Fifth and Los Angeles?

Trial Examiner Kennedy: Yes.

The Witness: Yes, I do.

Mr. Hall: What was the location that the Examiner mentioned of a bus station, Sixth and ——

Trial Examiner Kennedy: Sixth and Main Streets.

Mr. Hall: And Main Street. What was the corner; the southwest, was it?

Mr. Mouritsen: That is right.

Trial Examiner Kennedy: Southwest corner. [1758]

Q. (By Mr. Hall): As a matter of fact, there is a large office building on the northwest corner of Sixth and Main Streets, isn't there?

A. A large——

Q. (Interrupting): Office building?

A. Yes.

Q. There used to be a large banking room——

A. Correct.

Q. (Continuing) ——in the ground floor of that building; is that correct? [1759]

A. Correct.

Q. Do they still use that as a banking room, that big ground-floor room there on the corner?

A. Well, to tell you the truth, I don't remember. I never go through that direction at all. I don't

Q. Where, to the best of your recollection, is the pay any attention to that.

(Testimony of Abraham Pierce.)

nearest entrance to a bus station on that southwest corner?

A. Well, the southwest corner, it is only a restaurant.

Q. A restaurant? A. Correct.

Q. The busses don't come in and go out from there, do they? A. No.

Mr. Cosgrove: Before we take that recess, Mr. Examiner, may we have a stipulation with Mr. Mouritsen that the testimony of the witness Abraham Pierce has no application to the Los Angeles Times?

Mr. Mouritsen: It may be so stipulated.

Mr. Howard Binford: And the same as to the Stockholders [1760] Publishing Company?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: The same stipulation as to the Los Angeles Evening Herald and Express, as to the Times?

Mr. Mouritsen: So stipulated.

JOHN G. WEISBECKER

recalled to the stand by and on behalf of the Respondent, Los Angeles Examiner, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Hall) You are the Mr. Weisbecker who was called to the stand and testified on the 22nd day of June, 1940?

A. I think that is correct; yes, sir.

Q. And you testified at that time, as I recall, Mr. Weisbecker, that you are manager of circulation at the Los Angeles Examiner?

A. Yes, sir.

Q. Now, I am going to read into the record a definition of a certain class or category of newsboys, and I am going to refer to the newsboys that are within this definition, for brevity and convenience, as "Street Sale Newsboys." [1761]

The definition reads as follows:

"All newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the city of Los Angeles, California, except temporary newsboys.

"An 'established spot' is a place where a newsboy is engaged in the street sale of the Los Angeles Examiner five or more days a week for a period of six consecutive months or more.

"A 'Temporary Newsboy' is a newsboy who has

(Testimony of John G. Weisbecker.)

been engaged in the street sale of Los Angeles Examiners at established spots, for 30 days or less."

Now, I direct your attention to Board's Exhibit 18, which is entitled "An Agreed Statement of Facts," and I am handing you that Exhibit, and will ask you further with reference to that Exhibit and the definition of "Street Sale Newsboys", which I have read into the record. You will note that Paragraph 3 of that agreed statement of facts, page 5, states that: "Los Angeles Examiner is distributed through the State of California, but principally in the Metropolitan Area of Los Angeles, at its last audit bureau of circulation figures, has a daily, exclusive of Sunday, average circulation of 213,460 copies, only 3,743 copies of which are sold or distributed outside the State of California."

And then further on in the same paragraph of the same [1762] Exhibit, on Page 6, you will note that it is stated that:

"The Los Angeles Examiner has a Sunday average circulation of 566,175 copies, only 46,901 copies of which are sold or distributed outside the State of California."

Now, directing your atfention to the 3,743 copies of the daily issue which are sold or distributed outside the State of California, and the 46,901 copies of the Sunday issue or issues which are sold or distributed outside the State of California, I will ask you whether any of the "Street Sale Newsboys," as I have defined that term, buy or sell or in any

(Testimony of John G. Weisbecker.)

manner handle any of those 3,743 copies of the daily issues or any of the 46,901 copies of the Sunday issues?

A. The newsboys on the Los Angeles area?

Q. I am asking you with reference to newsboys as defined in the definition which I have read into the record, and my question is: Do any of those newsboys which I have defined as "street sale newsboys" handle any of these copies—

A. No sir.

Q. (Continuing)—which are referred to in this agreed statement of facts as being sold or distributed outside the State of California?

A. No, sir, they do not.

Q. Would any change in the volume of the sales of such newsboys, as they have been defined in the record, increase or decrease the volume of the sales of the newspaper outside [1763] of the State of California? A. No, sir.

Q. Does the newspaper—and by that I mean the Los Angeles Department, Los Angeles Examiner Department of Hearst Publications, Inc.—issue or deliver any checks or pay any money to newsboys, as defined in the definition which I have read into the record? A. No, sir; they do not.

Mr. Hall: You may cross examine.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Weisbecker, for what paper did you work before you came with the Los Angeles Examiner?

(Testimony of John G. Weisbecker.)

A. The Herald and Examiner.

Q. Where? A. Chicago. [1764]

Q. (By Mr. Mouritsen) Mr. Witness, what was the name of the paper that you worked for in Chicago?

A. The Herald and Examiner, and the Evening American.

Q. Evening American?

A. I worked for both papers at the same time.

Trial Examiner Kennedy: Just a minute.

What were you quoting from when you examined the witness? Statement of Facts?

Mr. Hall: Yes. It was Board's Exhibit 18, your Honor. [1766]

Trial Examiner Kennedy: It is not important, except for the question that I have in mind. I notice in Board's Exhibit 18, which is the agreed Statement of Facts referred to by counsel for the Los Angeles Examiner, the statement in Paragraph 3 thereof that the Los Angeles Examiner has a combined daily and Sunday average circulation of 263,848 copies, only 9,909 copies of which are sold or distributed outside the State of California.

Now, Mr. Witness——

Trial Examiner Kennedy: This is Paragraph 3 on page 6.

"It," referring to the Los Angeles Examiner, "has a combined daily and Sunday average circulation of 263,848 copies, only 9,909 copies of which are sold or distributed outside of the State of Cali-

(Testimony of John G. Weisbecker.)

fornia, the balance being sold [1767] and distributed wholly within the State of California."

Now, with that in mind, Mr. Witness, subtracting the 9,909 copies from the 263,848, the remainder being something over 250,000 copies, do you know how many of those copies are sold by street newspaper vendors?

The Witness: No, I would not know that.

Q. (By Trial Examiner Kennedy) Have you ever made a study or any investigation of the organization?

A. I have at different times, but right off-hand I wouldn't—because the circulation fluctuates so, and the way we define ourselves to the Auditing Bureau of Circulation, it takes in news stands and hustlers as well, and wholesale delivery as well. In other words, we file under a metropolitan basis as to one figure.

Q. Do you have any idea as to what, roughly, is the relationship?

A. No, sir, but I can possibly break that down to an approximate figure. It would take me a little time to do it.

Q. Would you say that half of your distribution is by street vendors, by newsboys such as we are discussing in this case?

Mr. Hall: Pardon me.

Is your Honor limiting his questions to newsboys as defined in this definition which has been made a bill of particulars?

(Testimony of John G. Weisbecker.)

Trial Examiner Kennedy: I am speaking of all street [1768] vendors, outside of the news stands. I think you have used the term "news stands," whether or not they are in the community as contended for.

The Witness: No. Right off-hand, I could not be positive without checking the figures. I would say——

Q. (By Trial Examiner Kennedy, Interrupting): I am not asking you to be positive. I want a rough estimate.

A. I would say that our home delivery and our news stand sales is possibly 80 per cent of our total.

Q. 80 per cent of the total?

A. That is it. Of the total circulation.

Q. 80 per cent?

A. That is an approximate figure, but I would have to check for that.

Q. Now, if some stoppage of sales should develop, due to a strike, for example, that would affect a major part of that 80 per cent outlet, do I understand it is your testimony that regardless of that, these 9,909 copies would go out into interstate commerce across the State line?

Mr. Cosgrove: May I suggest, the 80 per cent that this witness is talking about is the 80 per cent that is handled by carriers, that is, home deliveries, and by inside sales. [1769]

The Witness: That is correct.

Trial Examiner Kennedy: Is that correct?

(Testimony of John G. Weisbecker.)

The Witness: Yes.

Mr. Hall: That is what confused me on your Honor's last question.

Trial Examiner Kennedy: Yes.

Mr. Cosgrove: I thought it was apparent from the questions and answers that he had not made that clear.

The Witness: That is an approximate figure that I am giving you.

Trial Examiner Kennedy: Of that 80 per cent, what is your estimate of the percentage of sales made by street vendors, commonly known as newsboys?

The Witness: Well, the——

Mr. Hall (Interrupting): Is your Honor limiting it to within the City of Los Angeles?

Trial Examiner Kennedy: I am talking about the whole picture, as far as the paper is concerned.

Mr. Hall: Yes, sir.

The Witness: I would say the balance is 20 per cent.

Trial Examiner Kennedy: 20 per cent of the total?

The Witness: Of the total.

Trial Examiner Kennedy: And if that 20 per cent should be stopped, what effect would it have on those 9,909 copies that go across the State line? [1770]

The Witness: It wouldn't have any effect.

Trial Examiner Kennedy: It wouldn't have any effect.

(Testimony of John G. Weisbecker.)

Mr. Hall: Would that percentage be less than 20 per cent if you considered only newsboys engaged in sales within the City of Los Angeles?

The Witness: Yes, sir, it would.

Mr. Hall: Would it be considerably less than 20 per cent?

The Witness: It would be considerably less—yes, it would.

Mr. Hall: And if you restricted the definition of newsboys still further, and adopted the kind of definition which I put to you upon direct examination, would that still further limit the percentage below 20 per cent?

The Witness: Yes, it would.

Recross Examination

Q. (By Mr. Mouritsen) Mr. Weisbecker, there is something that is not entirely clear to me in Board's 18; that is, according to its last Audit Bureau of Circulation figures that the paper has a certain circulation. What are the last Audit Bureau of Circulation figures? What period do [177] they cover?

A. Well, your last figures I do not think have been received yet. That is March 31, 1940. It is for the period ending March 31, 1940.

Q. This is for the period preceding that; is that correct?

A. That I would have to look at the last Audit Bureau of Circulation report to determine. I think it is, but I am not positive.

(Testimony of John G. Weisbecker.)

Q. This is not for the period ending March 31, 1940?

A. Well, now, that I could not say. It looks somewhat like it. It looks something like the report that we file. Whether it is the exact figure there I do not know, without checking the auditing bureau.

Q. Well, as I understand you, the figures for the period ending March 31, 1940 have not been released by the Auditing Bureau of Circulation as far as the Examiner is concerned?

A. That is correct.

Q. Then they would not be the Audit Bureau of Circulation figures, would they?

A. That may be possible. We submit them to them and ordinarily they use those figures.

Q. Isn't it a fact that when you use the expression "Audit Bureau of Circulation figures," those are figures that have been released by the Audit Bureau of Circulation after you have submitted your publisher's report to them? [1772]

A. Well, we submit our publisher's report, and that is published in the paper. We can only assume that that is correct after they make their audit.

Q. Well, what are Audit Bureau of Circulation figures? Are those figures that you are authorized to release by the Audit Bureau of Circulation?

A. That is correct.

ARTHUR J. HAMPSON

recalled to the stand as a witness by and on behalf of the Respondent, the Los Angeles Examiner, having been previously duly sworn, was examined and testified as follows:

Q. (By Mr. Hall) You are the Arthur Hampson who was sworn and testified on June 22, 1940, at this hearing? [1773]. A. I am.

Q. I am going to read you a paragraph from your previous testimony given in this hearing on June 22, 1940:

"Q. Can you elaborate more on just what you do in that capacity?

"Mr. Hall: I think what he wants, Mr. Hampson, is for you to state the course of your duties, say, on a given day from the time you go to work until you get back or cease work. Is that right, Mr. Mouritsen?

"Mr. Mouritsen: That is entirely correct, Mr. Hall. Thank you.

"The Witness: Well, I have to get the amount of papers that each man desires, turn it over as a press order, see that all men are there on time ready to go out with the papers, keep in touch with the editorial department for any news—any change in the news—inform the boys what it is; certain reports and things to make out to be turned in upstairs; and see they are checked in before they go home."

Now, who are the men and boys that you were referring to in giving that answer?

(Testimony of Arthur J. Hampson.)

A. P. M. street men.

Q. Those are sometimes spoken of as night district men; is that correct? A. That is correct.

Q. Now, you were not referring to hustlers in giving that [1774] answer, were you?

A. No, sir, not at all.

Q. I am going to read into the record a definition of newsboys that for convenience I will refer to as "Street Sale Newsboys." The definition is as follows:

"All newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the City of Los Angeles, California, except temporary newsboys.

"An established spot is a place where a newsboy has engaged in the street sale of the Los Angeles Examiner five or more days a week for a period of six consecutive months or more.

"A temporary newsboy is a newsboy who has been engaged in the street sale of the Los Angeles Examiner at an established spot for 30 days or less."

That is the end of the definition.

Now, my question to you, Mr. Hampson, is this: Approximately how many newsboys of the type and description included within that definition handle the daily Los Angeles Examiner under or within the territory covered by these night district managers within the City of Los Angeles?

(Testimony of Arthur J. Hampson.)

A. How many, did you say?

Q. Yes.

A. I would say approximately five hundred. [1775]

Q. Are any instructions given to the newsboys selling the Los Angeles Examiner in the territory covered by these night district managers to the effect that the newsboys shall not sell other newspapers? A. No, sir, there is none.

Q. Are any instructions given to those newsboys to the effect that they shall not handle magazines?

A. No, sir.

Q. Is it a fact that those newsboys are compensated by the difference between the price that they pay for the newspapers, namely, two cents per copy for the daily edition and the price at which they sell the newspapers? Is that correct?

A. Yes, they are.

Q. And is the same thing true with respect to the Sunday newspapers? A. It is.

Q. Are any of the newsboys told that they must travel from what is called "the alley" at the Los Angeles Examiner Building out to the locations where they engage in the sale of newspapers?

A. They are not.

Q. In other words, that transportation is provided for them—is given to them if they request it?

A. Yes, sir. [1776]

Q. I think perhaps you have already testified to this, but I will ask it again.

(Testimony of Arthur J. Hampson.)

Is it a fact that the newspapers and editions which are sold by these newsboys are the Peach edition, the CC edition and the CCC edition, with sometimes a replate edition in between two of those others editions? A. That is correct.

Q. Are the newsboys that sell the Los Angeles Examiner in the territory covered by these night district men told that they must use change aprons?

A. They are not.

Q. Well, is it a fact that aprons are given to those newsboys only in cases where they request aprons? A. That is all. [1777]

Q. (By Mr. Hall) Do you know, as a matter of fact, what the practice is with respect to instructions to these newsboys concerning the period or hours that they must be on any spot?

A. There is no instructions given to the newsboys about any time to be on the spot.

Mr. Mouritsen: I object to that and move to strike the answer as not responsive.

Trial Examiner Kennedy: Let it go out.

Q. (By Mr. Hall) How long have you been manager, how long [1778] have you been in charge of these night district managers, Mr. Hampson?

A. Two years.

Q. And during that two-year period, have you had occasion to travel over the territory covered by those night district managers? A. I have.

Q. And have you done that frequently?

A. I have.

(Testimony of Arthur J. Hampson.)

Q. And have you during those trips over the territory inspected what went on in the territory with respect to newsboy activities?

A. I have.

Q. And the conduct of newsboys in general?

A. I have.

Q. You have.

Are you familiar by reason of your position with the Los Angeles Examiner with the instructions given to night district managers? A. I am.

Q. As a matter of fact, you give those instructions, don't you? A. I do.

Q. If they are given? A. I do. [1779]

Q. And spend, yourself, personally, a good deal of time there in this territory covered by the night district managers, do you not?

A. I do.

Trial Examiner Kennedy: Now, do I understand, Mr. Witness, that you give any such instructions if they are given?

The Witness: If they are given, yes, sir.

Trial Examiner Kennedy: Does any other employee of the Company have authority to give such instructions?

The Witness: To the men that work under me, you are referring to?

Trial Examiner Kennedy: Well, I am referring to the question of counsel, the instructions given to men on the spots—is that it—as to hours?

Mr. Hall: Yes.

(Testimony of Arthur J. Hampson.)

Trial Examiner Kennedy: If any?

Now, is there anyone else in authority in the Company who has the authority to give such instructions besides you? [1780]

The Witness: There is nobody with authority to give any instructions to the newsboys.

Trial Examiner Kennedy: You are the only one?

The Witness: The instructions are given by me to the district men.

Trial Examiner Kennedy: To the district men?

The Witness: Yes.

Trial Examiner Kennedy: Do the district men get instructions from anyone besides you?

The Witness: No.

Trial Examiner Kennedy: Do you ever give written instructions to the district men?

The Witness: No, I have not. It is all verbal.

Trial Examiner Kennedy: It is always oral.

All right; you may answer the question. [1781]

The Witness: In the period that I have been in charge of the night men, I have never given them an instruction in regards to time that a newsboy must be on the corner.

Q. (By Mr. Hall) I call your attention to another question and answer that appears in the testimony which you gave on June 22, 1940:

"Q. Now, at what price do you furnish newspapers to these night district men?

"A. The night district man has a set figure, a certain price of 3 cents. Anything over that is a cent and a half."

(Testimony of Arthur J. Hampson.)

Now, Mr. Hampson, that answer is not quite intelligible to me, although I think I know what you mean by the answer, and I will ask you if this is not the fact: That so far as these night district men are concerned, each has a quota of papers, and that for papers within that quota, daily issues, the night district man is charged by the Examiner—the [1782] night district man sells those papers to the newsboy at 3 cents? A. That is correct.

Q. There is a certain addition over that quota, is there not? A. There is.

Q. Which sells at a cent and a half; is that correct? A. That is correct.

Q. In the course of the testimony by Mr. Darrell Cole at this hearing, on June 24, 1940, Mr. Cole stated, as I recall, that after making certain observations in the territory covered by these night district men he made reports to you. Is that correct?

A. That is correct.

Q. What did you do after you received those reports?

A. I was mainly interested in locations for new outlets.

Q. Well, do I understand by that, that if the report showed that there was a new location at which there ought to be a news vendor, you would try to arrange that somebody took that over? Is that it? A. That is correct.

Q. As a result of any of those reports received

(Testimony of Arthur J. Hampson.)

from Darrell Cole, did you ever talk to any of the newsboys or attempt to discipline any of the newsboys? A. No, sir. [1783]

Q. As a result of any of those reports by Darrell Cole, do you, to your knowledge, know of any instance where a night district man has talked to or remonstrated with or attempted to discipline any newsboy? A. No, sir.

Q. (By Mr. Hall) Are the night district men instructed by you not to pay money to the newsboys or hustlers?

A. Yes, sir. They have a strict instruction on that.

Q. With reference to these Legion caps which have been mentioned in the testimony and which were handed out at the time of the Legion Convention in September, 1938, is it or is it not a fact that those caps were given not only to the newsboys, but to members of the public who asked for them? [1784]

A. That is correct.

Q. Were any of the newsboys, to your knowledge, told that they must wear those caps?

A. Not to my knowledge; no, sir.

Q. As a matter of fact, are the newsboys ever told they must wear any kind of article of apparel?

A. Not to my knowledge; no, sir.

Q. As a matter of fact, don't the newsboys upon occasion wear caps and other articles of apparel

(Testimony of Arthur J. Hampson.)

which advertise the products of some other producer other than Los Angeles Examiner?

A. They have; yes, sir.

Q. Would an instance of that be caps advertising Sherwin Williams paints?

A. That is correct.

Q. Well, is it fair to say that, so far as you and the night district managers are concerned, the newsboys can wear anything they please, so long as they are decently clothed?

A. That is correct.

Mr. Hall: You may take the witness.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Hampson, what is the basis of your statement that there are approximately 500 newsboys in the area of Los Angeles, City of Los Angeles, who work for the night men? [1785]

A. I have worked for the Examiner for approximately 15 years. I believe I have worked every district and I have got a knowledge of the locations of each and every district.

Q. Well, you believe you have worked every district. Is that a fact, or is it not a fact?

A. Within the city, yes.

Q. Within the city? A. Yes, sir.

Q. When you say there are 500 newsboys, what newsboys do you include within that classification? All the newsboys who have any contact with the night district men?

(Testimony of Arthur J. Hampson.)

A. No. I took it from the definition Mr. Hall read to me; those that are working better than four hours a day and five days a week.

Q. Has it been your experience that there are newsboys that work less, who work only a couple of hours on an evening? Are there any newsboys of that classification?

A. Not on the daily, that I know of.

Q. That is, for the night men?

A. Yes, sir.

Q. Has it been your experience that there are any places where Examiner newsboys handle the issue for only one or two nights a week?

A. Oh, yes; there is plenty of them. [1786]

Redirect Examination

Q. (By Mr. Hall) Now, in this figure of 500 that you mentioned, as I understand it you included only newsboys that are described and are within the definition which I read into the record; is that right? A. That is correct.

Recross Examination

Q. (By Mr. Mouritsen) Do you recall now what that definition was?

A. It was a newsboy that worked better than four hours a day on five days a week.

Trial Examiner Kennedy: You are excused—just a minute.

(Testimony of Arthur J. Hampson.)

Redirect Examination

Q. (By Mr. Hall) Did you include in that figure of 500 any newsboys outside the City of Los Angeles? A. No, sir; I did not.

Q. And did you include in that figure of 500 any newsboys located at spots which were not established spots as defined in the definition?

A. No, sir, I did not.

Q. And did you include in that number of 500 any temporary newsboys as "temporary newsboy" is defined in the definition, [1788] namely, a newsboy who has been engaged in the street sale at an established spot for less than 30 days?

A. No, I did not.

Recross Examination

Q. In what period of time does your estimate that there are 500 such newsboys cover?

A. I said with the experience that I have had in the 15 years, and the knowledge that I have gained in that 15 years, and particularly in the last two years, it gives me that that is the figure that I figure we have.

Q. Now, Mr. Hampson, to your knowledge hasn't the population of Los Angeles doubled in the last 15 years? A. Why, yes, it has.

Q. And your estimate is based upon knowledge that you have gained in 15 years on this? [1789]

A. I have worked continually for the Examiner for 15 years; and I think in that period of time, working in the different districts, that I ought to have a pretty fair idea.

(Testimony of Arthur J. Hampson.)

Q. Well, those districts have changed considerably in that period, have they not?

A. No, they haven't changed. We have put on extra districts in the past 15 years, yes.

Q. But I mean, the number of spots within a given district, in most cases, has increased in the last 15 years, hasn't it? A. Why, surely.

Q. And at any given period, could you—do you have any idea how many spots there are at the present time that have not been established for six months?

A. Well, I will make a guess. I don't think you will find 25 spots in this city that haven't been established for six months.

Q. That is only a guess; is that correct?

A. That is correct.

Q. Do you have any idea how many spots there are in the city, established spots there are in the city—you understand "established spots"?

A. Yes.

Q. ——how many spots there are in the city where the newsboys have been on those spots for less than 30 days?

A. I don't know of any new spots opened up in 30 days. [1790]

Redirect Examination

Q. (By Mr. Hall) When you were talking about this figure of 500 you were referring to the number of newsboys at the present time, weren't you? A. Yes, sir, I am. [1791]

Mr. Cosgrove: Before you take the recess, Mr. Examiner, may we have a stipulation, Mr. Mouritsen, that the testimony given today by the witness, John G. Weisbecker and the witness Arthur J. Hampson has no relation to the Los Angeles Times?

Mr. Mouritsen: That may be so stipulated. [1792]

ROY ELEY

recalled to the stand by and on behalf of the National Labor [1794] Relations Board in rebuttal, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Were you elected to any committees of the Newsboys Union recently?

A. I was.

Q. And to what committee?

A. The Labor Board Committee.

Q. Do you hold any position on that Committee?

A. I am the Chairman of that Committee.

Q. About when were you elected into that Committee?

A. The first Sunday in May, at a rank and file meeting.

Q. You are acquainted with the classes of newsboys whom the Union claims are within the appropriate unit? A. I am.

Q. In your capacity as chairman of this Committee, did you make any investigation to ascertain

(Testimony of Roy Eley.)

the number of men within the appropriate unit claimed, so far as the Los Angeles Examiner is concerned? A. I did.

Q. Will you state what investigation you made?

A. I personally visited every corner in the City of Los Angeles.

Q. Talk with the newsboys?

A. Stopped and talked to the newsboys wherever it was neces- [1795] sary, and absolutely determined how many newsboys were working on that corner and what papers they were selling. That is at night, I mean, and morning.

Q. During what period did you do that?

A. Well, starting as soon as we had organized, after the first Sunday in May and from then on up until—well, I got my last check about ten days ago, I believe.

Q. On the basis of that investigation, can you state how many newsboys there are within the City of Los Anegles——

A. (Interrupting) Yes, sir.

Q. (Continuing) ——within the appropriate unit claimed by the Union? A. Yes, sir.

Q. And how many are there? [1796]

The Witness: Three hundred thirty-nine.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) This investigation that you have referred to you concluded, I think, ten days ago? A. The final, yes.

(Testimony of Roy Eley.)

Q. And it started the 1st of May?

A. Approximately.

Q. How many hours did you work a day pursuing this investigation?

A. That depended on circumstances. Sometimes I have worked as many as four hours, five hours, six hours. Of course, you had to be out there at the time those boys were on the corner. And it was not a day; it was a night, but I was [1798] provided with an automobile, and I drove to these different corners night after night.

Q. Did you keep any written records as you pursued this investigation? A. I did.

Q. (By Mr. Hall) Did you include in this figure 339 night hustlers who carried both the Los Angeles Times and the Los Angeles Examiner? [1799]

A. I did where they were serviced by the district men of the two respective papers.

Q. How did you ascertain in a given case the fact, if it was a fact, that a given man was serviced by the district man of the two papers?

A. When I came to a corner where there was only one newsboy I stopped and went over and contacted that newsboy, and if I found that he was selling more than one paper I asked him how he got it, because there is instances where a newsboy might be selling both the papers; one as a newsboy of the Examiner and the other as a laydown of the Times. Those were included simply as an Examiner.

Q. Did you include in this figure 339 the news-

(Testimony of Roy Eley.)

boys that were selling the Los Angeles Examiner, the Los Angeles Times and the News? A. I did.

Q. Did you include in this figure 339 newsboys that were selling the Los Angeles Examiner and the Los Angeles News?

A. I could find no such instances.

Q. Did you discuss with these newsboys that you talked to the duration of time during which they had been selling newspapers?

A. During which they had been selling the newspaper?

Q. Yes. A. Not necessarily. [1800]

Q. You did not consult them about that?

A. Not necessarily; no. You mean as to how long they had been selling?

A. Yes.

A. Not necessarily.

Mr. Hall: I renew my objection, if the Examiner please, to the witness' testimony giving the number of newsboys, and move to strike the answer of the witness in which he stated or gave the figure 339, upon the further showing now developed by cross examination that the number of newsboys was based upon hearsay declarations of these newsboys, and I again assign any denial of my motion to strike as a violation of due process of law under the Fifth Amendment of the Constitution of the United States.

To particularize on that, we have here a conclusion now avowedly based upon ex parte out of the court

(Testimony of Roy Eley.)

room declarations made by people that we have had no opportunity to cross examine; based largely upon that, as the cross examination now discloses.

Trial Examiner Kennedy: Of course there is nothing to stop you from calling those people and examining them, if you think that is important. Mr. Witness, do I understand that you have arrived at the figure 339 as the number of people who are included within the definition of appropriate unit contended for by the Union in the Los Angeles Examiner [1801] case?

The Witness: I do.

Trial Examiner Kennedy: All right.

Now, you understand that the definition of appropriate unit includes certain newsboys at established spots who have worked four or more hours per day, five or more days per week, within the City of Los Angeles.

How did you ascertain whether or not these 339 were on established spots?

The Witness: The customary procedure in that respect—of course, in the most cases I was certain that they were established spots, being well acquainted with those spots, but if I found it was a spot that I did not know, I made it a point to ask the boy how long he had been selling papers on that corner.

For instance, I would know if Main Street is an established spot. I would not deem it necessary to ask anybody down there that question. But when I got out, say, on Florence and Vermont, when I went out

(Testimony of Roy Eley.)

there I would ask them if it really was an established spot.

Trial Examiner Kennedy: How many different inquires did you make on the question of whether or not the spot was an established spot?

The Witness: Well, I said wherever I was in doubt as to whether it was or not. [1802]

Q. (By Trial Examiner Kennedy) Do you know how many times you made that inquiry?

A. Well, I couldn't say. I might just estimate maybe fifteen.

Q. Fifteen times.

Now, temporary newsboys are excluded. How did you ascertain whether or not a newsboy was a temporary newsboy?

A. Well, now, we might be a little bit at odds there on that definition. A temporary newsboy, I mean in a temporary spot, is excluded because——

Q. As I read the statement given by the Board's attorney, it says "except temporary newsboys," excepting them from the definition of unit.

A. Well, the temporary newsboy as I define it in that case would be the boy who was out on Saturday nights, and I did not work on Saturday night, and for that reason—I made no check on Saturday nights for that reason in the majority of instances.

Q. A further definition of temporary newsboy is "a newsboy who is engaged in the sale of the Los Angeles Examiner at an established spot for 30 days or less."

(Testimony of Roy Eley.)

Now, how did you exclude the temporaries?

A. Well, if I might state, I made no attempt to exclude what you possibly are defining as a temporary newsboy.

Q. Well, I am not defining it. I am taking a statement of [1803] the Board's attorney, who is speaking for the Union.

A. You mean, then, did I, in case I came to a spot, an established spot, and saw a newsboy selling papers there, did I ask him whether he had been there 30 days or not?

Q. Yes.

A. If you did, I would have to say I did not.

Trial Examiner Kennedy: Well, on that showing, I will grant the motion to strike.

Mr. Mouritsen: And would the same motion be granted with reference to the Times, if I queried the witness regarding the practice of the Times?

Mr. Cosgrove: Just a minute.

Trial Examiner Kennedy: I do not know. If the same motion were made, if the same testimony were given, I suppose the ruling would be the same.

Mr. Cosgrove: I would like to hear the statement of counsel read.

(The record referred to was read by the reporter, as set forth above.)

Mr. Cosgrove: I did not get the word "if." I did not get the word "if." I understand it.

Q. (By Mr. Mouritsen) Well, Mr. Eley, in your capacity——

(Testimony of Roy Eley.)

Mr. Cosgrove: If you wish to cut the necessity and save time, economize on time, if the same questions were asked this witness as have been asked heretofore, with the change [1804] only that the words "Los Angeles Times" would be substituted for "Los Angeles Examiner," I would make the same motion.

Mr. Mouritsen: It is just the number we would have to change?

Mr. Cosgrove: Yes. I would make the same motion and would agree that for the number "339" the witness would testify to the number——

The Witness (Interrupting): I will have to refer to my lists to know exactly. I can't remember all of those numbers.

Q. (By Mr. Mouritsen) Well, refer to your list. What is the number on the Times?

A. On the Times it is 292.

Mr. Cosgrove: 292?

The Witness: 292, yes.

Mr. Cosgrove: I will so stipulate with you, Mr. Mouritsen.

Mr. Mouritsen: Thank you, Mr. Cosgrove. I accept the stipulation.

Trial Examiner Kennedy: If that were the case, I would rule that the witness has not testified as to a number because he has not made the exclusions that the definition of "unit" requires, and would therefore not permit that number to go in the record.

[1805]

Mr. Mouritsen: Mr. Cosgrove requested, Mr. Ex-

(Testimony of Roy Eley.)

aminer, that these Exhibits which have been put in evidence as Examiner's 3, 4 and 5, about which I believe you indicated Mr. Cosgrove should, or asked him to supply them, he desired that they might be by stipulation made to apply to the Times' case, and I suppose, the Herald and Express.

Mr. Compton: We understand that instead of supplying the same thing it will be supplied in one case and apply in all cases?

Mr. Mouritsen: Yes, and I would be willing to agree that is the case in order to save putting in twelve such Exhibits rather than three.

Trial Examiner Kennedy: Are you offering a stipulation?

Mr. Mouritsen: Yes. I would offer to so stipulate.

Mr. Cosgrove: We would like to embrace the stipulation, Mr. Examiner.

Mr. Howard Binford: The Stockholders Publishing Company will embrace the stipulation.

Mr. Compton: It is accepted on behalf of the Los Angeles Evening Herald and Express. [1808]

Wednesday, June 26, 1940 [1811]

ARTHUR FLOYD NATION

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

(Testimony of Arthur Floyd Nation.)

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Nation?

A. 326½ South Main, at the Elko Hotel.

Q. Do you handle Los Angeles Examiners?

A. Not at the present. I handle the Times now. But I have handled the Examiner under Abe Pierce about six weeks ago.

Q. I see. For how long a period of time?

A. Four months and a half.

Q. At what place?

A. Fourth and Main.

Q. And while you handled the Examiners at that place, who was the Examiner district man?

A. Abe Pierce. All but two weeks of that time. There was another district man that took his place during his vacation. [1813]

Q. While you were on that spot, during what hours did you work?

A. Ordinarily from about a quarter of 7:00 or 7:00 o'clock until about quarter of 1:00.

Q. And during the period while you were on that corner, where did you receive the copies of the first issues which you handled?

A. At Fifth and Main.

Q. And from whom did you receive them at that time?

A. From the main spot man at Fifth and Main.

Q. On any occasion during the period while you were on the Fourth and Main spot, did Abe

(Testimony of Arthur Floyd Nation.)

Pierce count out the first edition of the Peach to you?

A. No, sir. Except on Saturday. Of course these Sunday papers came through on a truck. He throws them off at the corner on Saturday. Other days, however, they are carried from Fifth and Main.

Q. Who carried them from Fifth and Main to you? A. I did.

Q. During the period while you were on that corner on Fourth and Main did you ever receive any maps? A. Yes, sir.

Q. Did you ever receive any maps from Abe Pierce?

A. Well, he threw them off the truck.

Q. And did you receive, though, such maps on more than one [1814] occasion?

A. Well, approximately three or four—about three times.

Q. On any occasion when Abe Pierce threw off a map similar to Board's Exhibit No. 21 for identification, did he ever have a conversation with you regarding that map?

A. Nothing more than he said to put it up where it can be seen, only in a much more stern voice than I put it.

Q. And on any occasion when he had maps did he himself personally ever put those maps up any place on your corner?

A. Absolutely not, no, sir.

Mr. Mouritsen: I will offer Board's Exhibit No. 21 for identification in evidence. [1815]

(Testimony of Arthur Floyd Nation.)

Mr. Hall: I have no objection to the offer, but I would like it to appear in connection with the offer of Board's Exhibit No. 21 that the object being offered is a map of a portion of Europe and Africa, apparently cut from a newspaper and pasted on a large sheet of cardboard. You have no objection to that statement, Mr. Mouritsen?

Mr. Mouritsen: No.

Mr. Hall: That is accurate, isn't it?

Mr. Mouritsen: That is accurate. And also I would like the record to show *the record to show* the exhibit bears the words "Map Copyrighted 1940 by Los Angeles Examiner."

Mr. Hall: So stipulated.

Trial Examiner Kennedy: It may be received in evidence. [1816]

Q. (By Mr. Mouritsen) And during the period, Mr. Nation, while you were on the Fourth and Main spot where did you check in?

A. Fifth and Main, Belmont Grill.

Q. And why did you check in at that spot rather than on Fourth and Main? [1817]

The Witness: Well, that was our orders from Pierce.

Q. (By Mr. Mouritsen) Do you recall when Pierce—or, when you first had any conversation with Pierce regarding the place where you were to check in?

(Testimony of Arthur Floyd Nation.)

A. Well, not any lengthy conversation, no. He just said, "We check in at the Belmont Grill."

Q. Well, did he tell you that at or about the time you started to operate on Fourth and Main?

A. Yes.

Q. You left that spot about six weeks ago?

A. Yes, sir; approximately that length.

Q. You were there about four and one-half months? A. Yes.

Q. Where did you have that conversation with him regarding the place you were to check in? [1818]

A. In at the Examiner alley, when he told me to go to Fifth and Main to meet him on the papers. I asked him then where I was to check in.

The Witness: He told me to check in at Fifth and Main. [1819]

Q. During the period while you were on the spot at Fourth and Main at what time did you start to operate on Saturdays?

A. At anywhere from quarter of 3:00 until 3:00 o'clock.

Q. As a general rule, during the first three or four hours that you operated on Saturdays approximately how many papers would you sell?

A. Approximately 15 until the second edition come out at 6:00 o'clock. I say "approximately" because that should vary from 10 to 15.

Q. Now, during the period while you were operating, will you please describe the procedure that

(Testimony of Arthur Floyd Nation.)

generally took place when you received these first copies of the Peach edition at Fifth and Main; just tell us what happened during that time.

A. Well, at around 6:30 he generally came along there, 6:30 to a quarter of 7:00.

Q. Who?

A. Mr. Pierce. He would blow his horn and turn around the [1820] corner and the man operating at Fifth and Main would take the papers out of the car * * *

Q. From whom?

A. From Abe Pierce to the man operating at Fifth and * * *

The Witness: And then each one of us, in rotation, from First and Main to Fourth would receive our papers, ranging from 15 to 30 papers; and we would carry our paper from Fifth and Main to our beats, each one of our own corners.

Q. (By Mr. Mouritsen) During that period, Mr. Nation, did [1821] you always receive the same number of copies of the Peach edition?

A. Most always, except on Sunday.

Q. Well, did that number vary from time to time? A. Yes.

Q. And did you have anything to do with fixing that number of papers that you received?

A. No, sir.

Q. And when any changes occurred in it did you have anything to do with the changing of the number of papers that you received?

A. No, sir.

(Testimony of Arthur Floyd Nation.)

Q. (By Mr. Mouritsen) Of the later editions of the paper that you received did you fix the number of those——

A. (Interrupting) No, sir.

Q. (Continuing) ——copies that you received?

A. No, sir.

Q. Who fixed those, if you know?

A. Mr. Pierce.

Q. During the period that you operated on Fourth and Main, Mr. Nation, did Mr. Pierce ever count out to you personally the copies of the first edition of the Peaches that you received? [1822]

A. No, sir.

Q. Are you a member of the Newsboys Union?

A. Not at present.

Q. You are here under subpoena, Mr. Nation; is that correct? A. Yes, sir.

Mr. Mouritsen: You may inquire.

The Witness: Sir.

Cross Examination

Q. (By Mr. Hall) These maps which Mr. Pierce gave you at your corner were all mounted on stiff cardboard before they were turned over to you, weren't they? A. Yes, sir.

Q. The maps which were pasted on cardboard were maps which were printed in the newspaper itself, weren't they? A. Yes, sir.

Q. But in the newspaper itself those maps did not appear on the front page, did they?

A. No, sir.

(Testimony of Arthur Floyd Nation.)

Q. What was the period you were selling Examiners at Fourth and Main streets?

A. Well, I started there just a little before Christmas.

Q. Last Christmas?

A. This last Christmas, yes. It might have been a little longer than four months and a half, but I——

Q. (Interrupting) And when did you stop selling papers? [1823]

A. About six weeks ago.

Q. During that time did you ever sell out all of the Peach edition?

A. On several occasions; yes, sir.

Q. Did Mr. Pierce refuse to give you further copies of the Peach when you did sell out?

A. Well, I won't say he refused, but he told me to go to Fifth and Main if I sold out and buy some more. He hardly ever came around when we needed him on the second pickup.

Q. How many times was it, you say, you sold out the Peach edition?

A. Well, I should say approximately 15 or 20 times.

Q. Did you ever ask Mr. Pierce to give you more papers than he gave you? A. Yes, sir.

Q. How many times?

A. Oh, two or three times.

Q. Just two or three times? A. Yes, sir.

Q. While you were selling Examiners at Fourth

(Testimony of Arthur Floyd Nation.)

and Main streets did you sell any other newspapers?

A. How is that question, may I ask you?

Q. Did you sell any other newspapers except the Examiner?

A. Oh, no; no, sir.

Q. You just sold the Examiner?

A. The Examiner; yes, sir. [1824]

Q. You are quite sure that during that whole period from Christmas down to the time you stopped selling the newspaper that the only newspaper you handled was the Los Angeles Examiner?

A. That is right.

Q. Did you sell any magazines?

A. No, sir.

Q. What is your present occupation?

A. I am working on the Times at Jefferson and Figueroa.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of the witness Arthur Lloyd Nation and Board's Exhibit No. 21 have no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Cosgrove: Thank you.

Mr. Compton: May the same stipulation be made with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: Yes. And with reference to the Stock- [1825] holders also.

Mr. Binford: And with reference to the Stockholders Publishing Company?

Mr. Mouritsen: Yes.

RAYMOND F. MARX

recalled as a witness by and on behalf of the Los Angeles Times, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Cont'd.)

Mr. Cosgrove: We will ask that the paper marked "Table showing percentage of daily out of state sales, total of average daily net paid circulation," to be marked Times Exhibit No. 7 for identification.

(Thereupon the document above referred to was marked Los Angeles Times Exhibit No. 7 for identification.)

Q. (By Mr. Cosgrove) Mr. Marx, counsel for the various parties in interest have signed what is called an agreed stipulation of facts, and it is marked Board's Exhibit No. 14, and it shows in paragraphs 3 and 4 the number of the average daily net paid circulation for the year 1939 of the Los Angeles Times to be 220,266. And do you observe that [1826] figure appearing on the exhibit No. 7 for identification? A. Yes.

Q. And of this number approximately 3,935 were sold outside the State. Do you see that figure?

A. Yes.

Q. And the percentage of the sales outside the

(Testimony of Raymond F. Marx.)

State as compared with the total net paid circulation to be 1.7, shown on the exhibit?

A. Yes, sir.

Q. And the agreed statement of facts shows that for the Sunday circulation, the net paid circulation of the Los Angeles Times was 367,814, as shown on Exhibit No. 7, and of that number 9197 were sold or distributed outside the State; that figure is also shown there? A. Yes, sir.

Q. And that the percentage of outside sales as compared with the total distribution on Sunday is 2.5 per cent? A. Yes, sir.

Q. Those figures are also shown on the exhibit?

A. Yes, sir.

Q. I will ask you if, since the execution of the agreed statement of facts, and since the hearing began, you have made an effort to determine what —I will withdraw that question. I will ask you if since the hearing began you have made an effort to figure out the number of the daily and the [1827] number of the Sunday total net paid circulation that have been distributed through street sales.

A. Yes, sir.

Q. And in that connection I will ask you if you used the same districts and the same hustlers that were shown in the schedule which was received as Times Exhibit No. 6. A. Yes, sir.

Q. The record discloses that those hustlers shown on Times Exhibit No. 6 are all of the hustlers that deal with district men, but it also shows

(Testimony of Raymond F. Marx.)

that these hustlers sell in unincorporated areas outside the city of Los Angeles, and the City of Glendale; do you remember that fact?

A. That is right.

Q. I will ask you if you determined the number of street sales by all of these hustlers that are shown on the Times Exhibit 6, that is, all street sales through all hustlers dealing with all district men. A. No, sir.

Mr. Cosgrove: Let me have that question read again, please.

(The question referred to was read by the Reporter as set forth above.)

Q. Do you understand the question?

A. Well, this was taken from our records when this record was made, if that is what you mean. [1828]

Q. Yes. A. Yes, sir.

Q. Let me ask the question again. Have you at my suggestion attempted to determine the total number of Los Angeles Times that are distributed by what we call street sales?

A. Yes, sir.

Q. And what is that figure? A. 13,958.

Mr. Mouritsen: That is per day, for the daily?

Q. (By Mr. Cosgrove) For the daily?

A. For the daily.

Q. For the Sunday what is it?

A. 31,720.

Q. Now let us take the daily distribution. That

(Testimony of Raymond F. Marx.)

distribution is made through all of the dealers, both inside the city of Los Angeles and outside of the city of Los Angeles, is it?

A. That is right.

Q. And it includes more outside territory than Glendale? A. That is right.

Q. It includes such other places as what?

A. Oh, Alhambra, South Pasadena, Burbank.

Q. Beverly Hills? A. Beverly Hills.

Q. Southgate. [1829] A. Southgate.

Q. Huntington Park? A. That is right.

Q. Now, did you try and ascertain exactly how many of the 13,958 were distributed in the cities of Glendale and Los Angeles?

A. No. That would be hard to do.

Q. Well, did you try to do it?

A. No, we didn't.

Q. Didn't you tell me this morning that you attempted to do that and couldn't do it?

A. Well, we attempted to do it, but that would be impossible to segregate just those certain areas.

Q. Well, that is what I want to bring out. You did try to do it? A. Yes, sir.

Q. And I asked you to see if you could do it?

A. That is right.

Q. And you took it up with Mr. Cohen and Mr. Nathan? A. That is right.

Q. And you could not determine; you had no information that would enable you to tell how many of the 13,958 were distributed inside the city of

(Testimony of Raymond F. Marx.)

Glendale and city of Los Angeles, and how many outside? A. That is right. [1830]

Q. Well, did you in these discussions and conferences and studies that you made arrive at a rough approximation of the percentage that is distributed inside the city of Los Angeles and the city of Glendale? A. Yes, sir.

Q. And what is that rough approximation?

A. I would estimate about 65 per cent.

Q. In the agreed statement of facts, that is, Board's Exhibit No. 4, and in paragraphs 3 and 4, is shown the out-of-state sales to be 9,197 on Sunday, and 3,935 on a week day. A. Yes, sir.

Q. In round numbers approximately 4000 on week days and 9000 on Sundays, out-of-state sales and distribution? A. Right.

Q. Do you remember that I called your attention to a what I call bill of particulars that was read into the record, by which counsel for the Board defined a newsboy as one who sold on an established spot, and also who was not a temporary boy? Do you remember my reading that to you?

A. Yes, sir.

Mr. Cosgrove: And for the purpose of the record at this time I will again read it. It is: "All newsboys engaged in the street sale of Los Angeles Times at established spots four or more hours per day, five or more days per week, within the city limits of Los Angeles and Glendale, California, [1831] except temporary newsboys.

(Testimony of Raymond F. Marx.)

"An established spot is a place where a newsboy is engaged in the street sale of the Los Angeles Times five or more days a week for a period of six consecutive months or more.

"A temporary newsboy is a newsboy who is engaged in the street sale of the Los Angeles Times at an established spot for thirty days or less."

Q. Do you remember my reading that definition to you? A. Yes, sir.

Q. And you remember our discussing it and analyzing it? A. Yes, sir.

Q. Now, in attempting to provide that definition, we will call these newsboys those defined, say, as permanent newsboys on established spots. I will ask you if all of the newspapers of the Los Angeles Times that are distributed in the cities of Los Angeles and Glendale are distributed on established spots by permanent newsboys?

A. No, sir.

Q. So there is some portion, then, of this number less than what you would approximate at 65 per cent of, let us say, 9000, some portion that is distributed by newsboys who could not qualify as permanent newsboys on established spots?

A. That is right.

Q. Did you attempt to make even a rough estimate of what [1832] that number would be?

A. Yes, we made an attempt to do it.

Q. And did you have any success at that?

A. No success.

(Testimony of Raymond F. Marx.)

Q. The agreed statement of fact—that is Board's Exhibit 14—shows, as does this Exhibit No. 7 for identification of the Times, that the out of state sales average approximately 4000 daily and approximately 9200, say, on Sundays. And I will ask you to assume that all the newsboys who distribute the Los Angeles Times in the cities of Los Angeles and Glendale, whether permanent boys on established spots or not—just take them all—assume that they would refuse or fail for some reason to distribute the Los Angeles Times on week-days or Sundays. What if any effect would that have upon distribution out of the state of the approximately 4000 daily and approximately 9200 Sundays?

A. No effect. [1833]

Q. (By Mr. Cosgrove) What if any connection do the boys whose names appear in this Exhibit No. 6 of the Times have with the sending to out of state points of the Los Angeles Times or with the out of state sales of the Los Angeles Times?

A. Nothing to do.

Q. Does the number of papers that are sent outside of the state have any relation at all, in the matter of sending them out, to the activities of the hustlers in street sales in the cities of Los Angeles and Glendale? [1835]

The Witness: It has no bearing on that. [1836]

Q. With reference to newsboys as defined in the definition which I have read into the record, in which I have just called "Permanent boys on es-

(Testimony of Raymond F. Marx.)

tablished spots," my question is: Do any of those newsboys which I have defined as "permanent boys on established spots" handle any of these copies which I referred to in the agreed statement of facts as being sold or distributed outside the State of California? A. No, sir.

Q. Would any change in the volume of sales of such newsboys, as they have been defined in the record, increase or decrease the volume of the sales of the newspaper outside of the State of California?

A. No, sir. [1837]

Q. Now, if some stoppage of sales should be developed due to a strike, for example, that would affect a major part of that 6.5 per cent do I understand it is your testimony that regardless of that these 3935 copies would go out into interstate commerce across the state line? A. Yes, sir.

Q. What is the answer? A. They would.

Q. And if this 6.3 per cent should be stopped what effect would it have on those 3935 that go across the state line? A. No effect.

Mr. Cosgrove: That is all.

Q. (By Mr. Cosgrove) Pardon me, the same situation applies to the Sunday circulation as to the daily circulation, doesn't it? A. That is right.

Mr. Cosgrove: That is all.

Trial Examiner Kennedy: Is there anything further?

Mr. Cosgrove: Oh, I will offer the tabulation which has these figures in evidence as Times' Exhibit No. 7. [1841]

Trial Examiner Kennedy: Received. Any further examination of the witness?

(Thereupon, the document above referred to was received in evidence as Los Angeles Times Exhibit No. 7.) [1843]

GROVER CLEVELAND NIXON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Nixon, where do you reside?

A. 820½ West Third Street, Hotel Andrew.

Q. You are here under subpoena?

A. Yes, sir.

Q. Are you at present handling the Los Angeles Examiner? A. Yes, sir.

Q. Where? A. First and Main.

Q. Who is your district man?

A. I only know him by the name of Abie. But, then, everybody says his name is Pierce, and that's all I know about it.

Q. How long have you been handling the Los Angeles Examiner at that spot?

A. Well, I should say close on to a year.

Q. During that time has Mr. Abie Pierce been your district man? [1844]

A. Well, yes, I might say so. But sometimes more nearly every week he is off two days and an-

(Testimony of Grover Cleveland Nixon.)

other man, substitute, takes his place. Nevertheless, he is under the manager Abie Pierce.

Q. And during what hours do you operate on that spot?

A. Well, we are supposed to start about 6:30 to quarter of 7:00, along like that, and work until 1:00 o'clock in the morning. I, myself—I am speaking of my specific case.

Q. I believe you said you were on First and Main? A. Yes.

Q. During that period, Mr. Nixon, where have you received your first copies of the Peach edition?

A. At Fifth and Main.

Q. During that period has there been any occasion on which Abe Pierce has left you the first copies of the Peach edition at First and Main?

A. No. He never has given me a solitary paper on that corner.

Q. Will you please describe the procedure when you received your copies of the first edition of the Peach? A. Fifth and Main.

Q. On Fifth and Main?

A. You speak about how they are delivered, and so forth?

Q. Yes.

A. Well, he comes out Main Street and turns east on Fifth from the south corner and the boys take the papers out of the [1845] car and stack them on the sidewalk, and there is that sheet of paper business again. He has each corner's quota of papers

(Testimony of Grover Cleveland Nixon.)

marked down, some order or other, and that is the way they are given out.

Q. And who give them out?

Mr. Hall: Just a moment. I move to strike that portion of the answer relating to a piece of paper and its contents.

The Witness: What did you say, please?

Trial Examiner Kennedy: It may go out.

Q. (By Mr. Mouritsen) Mr. Nixon, after you see this piece of paper what as a general rule happens to it?

A. Well, he reads off the—reads off the paper and if it is me I get 15 to 20, 25 to 30 papers, and the next one gets his quota when he may be called.

Q. And when you say "he" whom do you mean?

A. The man on the so-called star corner, Fifth and Main; not Abie himself—or, rather, Mr. Pierce.

Q. What does the man on the star corner—is he also known as main spot boy? A. Yes.

Q. What does he do with that paper after he reads off the list of——

A. (Interrupting) That is what I don't know—oh, yes, I do too. I had a little experience. He keeps—he reserves that paper for reference against the time of checking in, and [1846] the reason I know that is because night before last I thought I was going to help this star corner man to do his counting, and I counted my own 15 papers, because I had been getting so regularly the 15 papers, you know, and I counted myself the 15 papers and took

(Testimony of Grover Cleveland Nixon.)

them away to my corner, and I told him before I left that I had 15 papers, and he asked me distinctly how many I have, and I told him 15 again.

Q. (By Mr. Mouritsen) Well, as I understand, your testimony then is Abe Pierce comes along Fifth Street—strike that. He comes along Main and turns up Fifth and——

A. (Interrupting) Puts the papers—they take the papers out of the car themselves, the boys do.

Q. Then at that time he gives to the main spot boy a slip of paper? A. That's it.

Q. And the main spot boy reads from the slip of paper? A. Always, yes, sir. [1847]

Q. And what does he do when he reads from the slip of paper, as a general rule?

Trial Examiner Kennedy: It is the main spot boy that does the reading from a piece of paper, is that right?

The Witness: He handles the piece of paper. Ordinarily, he doesn't say out loud what he reads off the paper. Those numbers I spoke about. He just looks on the paper——

Trial Examiner Kennedy (Interrupting): Looks at it?

The Witness: Yes. Sometimes, however, he does say 20, or 15, but it is not regular.

Trial Examiner Kennedy: It is always the same boy that you are talking about that does this, the same individual?

The Witness: No. Because this young man we

(Testimony of Grover Cleveland Nixon.)

are talking about sometimes say, oh, I don't know if it is a day a week or two days a week, but one day a week anyhow, some other young man takes over for him for that particular day.

Trial Examiner Kennedy: What is the name of this individual who generally does it?

The Witness: I couldn't tell you.

Trial Examiner Kennedy: Do you know the names of any of [1848] his substitutes?

The Witness: No, sir, I do not.

Trial Examiner Kennedy: I will allow the answer to remain in the record.

Q. (By Mr. Mouritsen) And that is the procedure followed by the main spot boy who is on the corner at the present time; is that correct?

A. Yes. He just reads off of that paper.

Q. Does the main spot boy give you your papers? A. Ordinarily, yes.

Q. And then what do you do?

A. Go to First and Main, carrying the papers.

Q. Why, Mr. Nixon, do you receive your papers at Fifth and Main rather than at First and Main where you sell?

A. Well, I can't conscientiously answer that question because I don't know. That is Mr. Pierce. I don't know why he does it that way.

Q. The question is not why Mr. Pierce does it that way, but why do you receive your copies of the paper at Fifth and Main rather than at First and Main? [1849]

(Testimony of Grover Cleveland Nixon.)

The Witness: Well, I can only answer that by saying because Mr. Pierce brings them to Fifth and Main and requires us to go there after them. Is that satisfactory?

Q. (By Mr. Mouritsen) I believe you stated that the number of papers you received of that first edition of the Peaches varied from time to time; is that correct? A. Yes, sir.

Q. Do you determine the number of papers, of copies of the Examiner that you receive on the first edition of the Peach? A. I do not.

Q. Who determines that, if you know?

A. Mr. Pierce.

Q. And do you receive subsequent editions of the paper?

A. Yes, sir. When he brings them on the corner.

Q. And do you determine the number of succeeding copies of the Examiner that you receive?

A. I have positively no voice in that at all.

Q. Who determines that, if you know?

A. It is either Mr. Pierce or it is operated from the office. I couldn't tell which.

Q. During the period that you have been on that corner has Abe Pierce ever given you any maps or placards to display? [1850]

A. Just like that (indicating).

Q. And I will show you Board's Exhibit 21 and ask you if that is what you referred to when you said, "Just like that"?

(Testimony of Grover Cleveland Nixon.)

A. Yes, sir; a map just like that.

Q. On any occasion when Mr. Pierce has given you a map similar to Board's 21, has he ever posted that on your corner himself?

A. No, sir; he has not.

Q. Has anyone posted it on your corner?

A. Only myself.

Q. And on any such occasion did you ever have a conversation with Mr. Pierce regarding the posting of such placards or maps?

A. No conversation, except that he said, "Put it on the post—put it up," rather. He meant the post, on the candelabra post, lamp post.

Q. Has he given you such maps on more than one occasion?

A. Well, back in my mind I see about five occasions, on account of this war.

Q. Where do you check in, Mr. Nixon?

A. Fifth and Main, at the Belmont Grill, I believe they call it.

Q. And to whom do you check in?

A. Whoever happens to be the district man on that particular night. Ordinarily, though, it is Mr. Pierce.

Q. On any occasion during the times you have been operating [1851] on First and Main has Mr. Pierce ever checked you in at First and Main?

A. No; not on the week day string of papers; and on the Sunday papers he comes around—oh, I don't know when—sometime before midnight and makes a collection from my particular self of four

(Testimony of Grover Cleveland Nixon.)

to five dollars; so then, I make a final check-up then to Belmont Grill. In other words, finally and ultimately, I check in every night at the Belmont Grill.

Q. Why do you check in with Mr. Pierce at the Belmont Grill rather than at your spot on First and Main?

A. Well, he requires us to come over to check in.

Q. At what time do you ordinarily report for work on Saturday?

A. About a quarter of three, that is, a quarter of three in the afternoon.

Q. That is approximately three hours earlier than you do on week days?

A. Something like that; yes.

Q. During the period between 3:00 and 6:00 o'clock on Saturdays during the period that you have been on First and Main, how many copies of the Examiner on an average have you sold?

A. Well, five or six.

Q. Mr. Nixon, why do you remain on the corner between 3:00 [1852] and 6:00 on Saturdays if you sell only five or six copies of the paper during that period?

A. Well, if I didn't stay I would be summarily discharged and somebody else would stay, and he would put somebody else on there. You have to stay. In other words, it is part of the job.

Q. (By Mr. Mouritsen) During the period that you have been receiving your first copy of the Peach

(Testimony of Grover Cleveland Nixon.)

at Fifth and Main, have you ever received them from a main spot boy known as Sollie Sanchez?

A. Yes.

Q. You recall him? A. I do.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) Where did you receive the newspapers from Sanchez; at First and Main or at Fifth and Main?

A. Yes, sir. First and Main.

Q. First and Main? [1853]

A. No, no; Fifth and Main.

Q. Fifth and Main?

A. The regular place.

Q. When these maps were delivered to you they were mounted on stiff cardboard, were they?

A. Just like that exactly.

Q. All of them mounted on stiff cardboard?

A. Every one.

Q. So that the maps would stand up if they were set up against the building, wouldn't they?

A. Yes; obviously they would.

Q. Did you ever complain to Mr. Pierce about not getting enough newspapers?

A. No, sir; I never have a solitary time.

Q. Are you acquainted with Mr. Roy Eley?

A. Who?

Q. Mr. Roy Eley.

A. Mr. Elling—I never heard of him.

Mr. Hall: I request Mr. Eley to stand up.

The Witness: Uh-huh.

(Testimony of Grover Cleveland Nixon.)

Q. (By Mr. Hall) You know Mr. Eley now?

A. Sure I do.

Q. Are you acquainted with Mr. Pat Comorre?

A. Unless that is he over there.

Q. He is the gentleman sitting with his bare arms right [1854] next to Mr. Mouritsen at the counsel table. A. Yes, sir.

Q. You know him, do you?

A. I know him. I didn't know his name, though.

Q. You know both these gentlemen?

A. Yes, sir.

Q. When did you first become acquainted with Mr. Roy Eley? A. Mr. Who?

Q. Mr. Eley.

A. Oh, I can't tell you, to save my life.

Q. Are you a member of the Newsboy's Union?

A. Yes.

Q. Whenever you received these newspapers from Sanchez, that was at Fifth and Main Streets, wasn't it? A. Fifth and Main.

Q. Every time he delivered them to you?

A. Every time. Oh, may I recall that question about making his acquaintance? Mr. ——

Q. Mr. Eley?

A. It was somewhere close along when he took over the secretarial end of the C. I. O., whenever that was, on the street.

Q. Does Mr. Pierce ever stop his car at First and Main Streets and get out?

A. One time, and one only that I can recall. [1855] I was talking about First and Main.

(Testimony of Grover Cleveland Nixon.)

Q. Yes.

A. Where I work.

Q. Yes. A. Once, and once only.

Q. That is right. Do you sell any magazines?

A. No, sir.

Q. Do you sell any newspaper except the Los Angeles Examiner?

A. Just the Examiner. The Examiner only.

Mr. Hall: Just the Examiner. That is all.

Trial Examiner Kennedy: Anything further?

Did you ever tell Mr. Pierce to bring your papers to you at First and Main?

The Witness: No.

Trial Examiner Kennedy: That is where you sell, First and Main, isn't it?

The Witness: I never made any such request as that.

Trial Examiner Kennedy: You don't know whether he would do it if you did make a request or not, do you?

The Witness: Well, I don't think he would because it is so much out of his way. [1856]

Redirect Examination

Q. (By Mr. Mouritsen) On the corner where you operate are there any newsboys who handle other papers? A. Yes.

Q. And what other papers do such newsboys handle?

A. Well, it is the Examiner—rather, the Times and the [1857] Herald, and that peach-colored pa-

(Testimony of Grover Cleveland Nixon.)

per, and the Daily News—the Daily News and the L'Opinion. I guess that is all. That is enough, though, at that.

Q. How many newsboys are there on the corner besides yourself?

A. Well, the Herald man handles that string of papers I have been talking about, except L'Opinion, and he checks in or checks out, rather, or, in if you want to call it "in," at about—somewhere at about 7:30, and the Times man takes it over.

Q. What do you mean he takes it over?

A. Well, he turns whatever papers he has left, turns them over to the Times man to be sold with a profit—the profit accruing from them goes to the Times man.

Mr. Mouritsen: I think that is all.

Recross Examination

Q. (By Mr. Hall) Do you take over any of the News? A. The what?

Q. Do you take over the sale of any of the News for the News man who has been on the corner during the day?

A. I don't quite understand your question. If he is absent I sell for him. That is a tacit agreement between us, that if I am absent he helps me that much while I am gone, and vice versa.

Q. And when he quits at 6:00 o'clock in the evening, or [1858] whenever it is that he does quit, do you take over any of his unsold papers and sell them?

(Testimony of Grover Cleveland Nixon.)

A. He gives me two outright, give them to me.

Q. Oh, he gives them to you?

A. To get rid of if I can.

Q. And if you do get rid of them you get the full amount you sell those two papers for?

A. Five cents apiece.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness Grover Cleveland Nixon has no application to the Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Howard Binford: And has no application to the Stockholders Publishing Company, the same stipulation?

Mr. Mouritsen: Yes, sir.

CARL LESLIE JOHNSON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

Mr. Compton: Just a moment, please. Will you make the [1859] same stipulation on behalf of the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: So stipulated; also with reference to the Stockholders Publishing Company.

Mr. Binford: Thank you.

(Testimony of Carl Leslie Johnson.)

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Johnson?

A. 420 West 31st Street, Los Angeles.

Q. You are here under subpoena?

A. Yes, sir.

Q. Do you handle the Los Angeles Examiner?

A. I do.

Q. Where do you handle it?

A. Third and Main.

Q. How long have you handled it at that spot?

A. I have been on that spot about six weeks.

Q. Who is your Examiner district man?

A. I know him as Mr. Abe Pierce.

Q. And during that period where have you received the first copies of the Peach edition that you handle? A. Fifth and Main streets.

Q. On any occasion during the period that you have handled the Examiner has Mr. Pierce delivered the first copies of the [1860] Peach edition to you at Third and Main?

A. I would like to say that I handle it on an off spot. I am not the main spot guy at Third and Main, but I am the off spot man there. But I handle the Examiner, but I have to report to Fifth and Main to get the Examiner and help the main spot man to bring his papers to Third and Main. And, to my knowledge, I have never seen Mr. Pierce give the main spot man his papers, nor has he given them to me.

(Testimony of Carl Leslie Johnson.)

Q. That is, the first copies of the Peach?

A. The first copies of the Peach. I have never seen him hand them out to either one of us.

Q. From whom do you receive them at Fifth and Main?

A. The man that is termed as the main spot man on Fifth and Main gets the papers from Mr. Pierce. Mr. Pierce delivers them to him and then he counts them out to the different hustlers along the streets.

Q. Approximately how many hustlers are there on an evening who receive the first edition of the Peach at Fifth and Main from the main spot boy?

The Witness: I say there is about six.

Q. (By Mr. Mouritsen) And do they report there each evening [1861] at approximately——

A. (Interrupting) Each evening at approximately 6:00 o'clock, and wait for the papers until they get there.

Q. That is on week days?

A. On week days; yes, sir.

Q. Where do you receive the later editions of the paper?

A. Mr. Pierce drives on down to Third Street, or further down still, in his car and he hands the later editions to the main spot guy at Third and Main.

Q. And during any of the period that you have been on that spot has Mr. Pierce ever counted out to you personally the copies of the later editions which you handle?

A. He does not. He has not.

(Testimony of Carl Leslie Johnson.)

Q. During the period that you have been on this spot at Third and Main, Mr. Johnson, where have you checked in each evening?

A. I have been on the off spot there and check in to the main spot man on Third and Main, and he checks in to Mr. Pierce.

Q. Where does he check in to Mr. Pierce, if you know?

A. Fifth and Main, Belmont Grill.

Q. Mr. Johnson, why do you go to Fifth and Main to receive the first copies of the Peach edition of the Examiner that you receive, that you handle? [1862]

(The question referred to was read by the reporter as set forth above.)

The Witness: When I was first sent to Third and Main by Mr. Pierce, why, he told me to stop at Fifth and Main and he would be there with the papers, he would come there; and he didn't give me the papers then, but he told this main spot man there to give me the papers for Third and Main; and told me to go on to Third and Main, and each evening it has been the same thing there.

Q. Are you a member of the Newsboys Union, Mr. Johnson? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) The editions after the Peach edition are delivered, you said, by Mr. Pierce to the main spot man at Third and Main streets?

(Testimony of Carl Leslie Johnson.)

A. Yes, sir.

Q. And it is from that main spot man at Third and Main streets that you draw your papers after the Peach edition; is that it?

A. Yes, sir.

Q. Do you sell the Herald and Express?

A. Well, if the main spot Herald man, when he goes off in the evening, leaves any there the Examiner man takes them off of him and sells them during the night if anybody wants them; and if I go over there and ask him for a Herald, I go [1863] over there and carry it to my spot.

Q. Do you sell any papers besides the Herald and Express? A. Herald and News.

Q. The News?

A. Yes, sir. If he leaves some News there for him, and there is a Times boy over there on the main spot.

Q. Do you handle newspapers for the main spot Times boy?

A. And I handle some papers for him, just carry them over there. If anybody asks for the Times, why, I am glad I got it over there and I sell that to him.

Q. How much do you make on those Times that you sell? A. I make the regular profit.

Q. The regular profit. And how much is that on the daily Times? A. 2 cents.

Q. Do you make a profit on the other newspapers you sell? I mean by that, the Herald and the News? A. Yes, sir.

(Testimony of Carl Leslie Johnson.)

Q. Is that a change apron you are wearing?

A. Well, it is just an apron—yes, sir; an apron one of the boys gave me.

Q. Is that an Examiner apron?

A. No, sir. It is a Herald apron. You see, I am partially paralyzed on my left side. I got this so it made it handy for me to get the change. [1864]

Q. Yes; I see. You check in with your main spot man at Third and Main, don't you?

A. Yes, sir.

Q. You do not check in with Mr. Pierce?

A. I don't check in to Mr. Pierce.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Johnson, what paper do you carry and display in your hands when you sell? A. The Examiner.

Q. On an average how many copies of the Examiner do you sell on a week night?

A. I think I have this list that I had last night. I can tell you. (Producing document) 16 Examiners last night, 3 times.

Q. Any news?

A. One Herald, 4 News.

Trial Examiner Kennedy: Is that an average night's work?

The Witness: No, sir, it is not. I have worked that corner. Usually I can make around 50 cents a night with all four papers. When I first started out at Third and Main, that would be an average night. I would have done well if I made that much.

(Testimony of Carl Leslie Johnson.)

I have worked down there all night for 15 cents, about, but I have got it up now where I can make a little [1865] better than that on an average. In fact, I have sold as high as 60 papers at Third and Main.

Q. (By Mr. Mouritsen) How old are you, Mr. Johnson? A. How old am I?

Q. Yes.

A. I will be 45 years old if I live to the 21st day of September.

Mr. Cosgrove: May it be stipulated that the testimony of the witness Carl Leslie Johnson has no application to the Los Angeles Times case?

Mr. Mouritsen: So stipulated.

Mr. Compton: The same stipulation as to the Los Angeles [1866] Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. Howard Binford: And the same as to the Stockholders Publishing Company?

Mr. Mouritsen: So stipulated.

HARRY LOUIS BUHL

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Buhl?

A. 2117 Darwin Avenue, Los Angeles.

Q. You are here under subpoena?

A. I am.

Q. Do you at present handle the Los Angeles Examiner? A. I do.

Q. Where do you handle it?

A. Fourth and Main.

Q. How long have you handled it at that spot?

A. About a week—not quite a week.

Q. Prior to that time did you handle it at any other spot? A. Second and Main.

Q. How long did you handle it at that spot?

A. About three weeks. [1867]

Q. During the period that you have handled the Examiner at those two spots, where have you received the first edition of the Peach edition that you handle? A. Fifth and Main.

Q. And from whom do you receive them at that place?

A. The man that is working the Fifth and Main corner, main corner of the Examiner.

Q. Who is your district man?

A. The district man, I know him as Abe.

(Testimony of Harry Louis Buhl.)

Q. And do you know whether or not his last name is Pierce? A. I couldn't say.

Q. During the period that you have been on the two spots you have named, has Pierce ever personally counted out to you the copies of the Peach edition of the Examiner that you handle?

A. No. Except on Saturday.

Q. Where do you check in?

A. Belmont Grill, Fifth and Main.

Q. Why do you check in at the Belmont Grill rather than on your spot at Fourth and Main?

[1868]

The Witness: Because I was told to.

Q. (By Mr. Mouritsen) By whom?

A. Abe.

Q. And when did he tell you to check in at the Belmont Cafe?

A. When I was working the Second street corner.

Q. And that commenced about four weeks ago, is that correct?

A. Approximately three weeks ago.

Q. Where did the conversation take place?

A. At the corner of Second and Main when I was getting my first edition of the Double C—the 9:00 o'clock edition, in other words.

Q. Was anyone else there other than you and Pierce? A. No, sir.

Mr. Mouritsen: You may inquire.

(Testimony of Harry Louis Buhl.)

Cross Examination

Q. (By Mr. Hall) In your present location are you an off-spot news seller or are you a main-spot?

A. I am at the main spot.

Q. When you were at Second and Main streets were you main-spot or off-spot?

A. Main-spot.

Q. What other newspapers do you sell besides the Los Angeles Examiner? A. None. [1869]

Q. What magazines do you sell?

A. None.

Q. Has that been true both at Fourth and Main and Second and Main? A. No.

Q. Where did you sell Magazines or other newspapers?

A. I sold the Herald and News at Second and Main.

Q. Do you sell any magazines at Second and Main? A. No, sir.

Q. Were you off-spotting or main-spotting for the sale of the News and the Herald at Second and Main? A. I really don't know, sir.

Mr. Hall: that is all.

Redirect Examination

Q. (By Mr. Mouritsen) These copies of the Herald or the News that you sold, were they just one or two copies that were left with you by the Herald and Express boy who preceded you?

A. They were left there that I sell them if pos-

(Testimony of Harry Louis Buhl.)

sible and turn the money over to him the following day.

Q. And did they ever amount to more than two or three copies of the paper? A. No, sir.

Q. How old are you, Mr. Buhl?

A. 36. [1870]

Q. Are you a member of the Newsboys Union?

A. Not at present.

Q. During what hours during the week do you operate in your present spot?

A. I was told by Mr. Abe to be there at 6:00 o'clock in the evening, and the papers don't arrive on the corner until 6:45 to 7:00 o'clock.

Q. And how late do you operate?

A. 1:00.

Q. And that is the time when you check in to——

A. (Interrupting) That is the time I check in at Fifth and Main; yes, sir.

Q. Why do you check in at the Belmont Grill rather than at your spot?

The Witness: Because I was told to check in at Fifth and Main by Abe.

Recross Examination

Q. (By Mr. Hall) These Heralds and News that you sold for the other newsboy, you made a profit on them, didn't you?

A. I made the regular profit, yes, sir.

Mr. Hall: That is all. [1871]

(Testimony of Harry Louis Buhl.)

Redirect Examination

Q. (By Mr. Mouritsen) How many copies of the Examiner do you sell on an average night during the week at Fourth and Main?

A. At Fourth and Main?

Q. Yes.

A. That corner averages around 55 to 65.

Q. Who determines the number of papers of each edition that you receive?

A. The district manager.

Q. And that is Abe? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Mr. Hall: Did you ever ask Abe Pierce for more papers than he gave you?

The Witness: I have never asked him, no. [1872]

JOHN DEERING

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Deering, do you handle the Times on the corner of Fifth and Main at the present time? A. I do.

Q. How long have you been there?

A. Well, I have been there at least a year.

Q. And during that period have you observed

(Testimony of John Deering.)

how the Examiner [1873] man, Abe Pierce, makes delivery of the first copies of the Peach Edition of the Examiner? A. Yes, sir.

Q. Will you describe how that delivery takes place?

A. Well, the time of course varies a few moments, but he drives up Main Street from the direction of Sixth, blowing his horn, and turns the corner onto Fifth off of Main going east. He stops right there by the corner. And then I see the—some of the boys there, sometimes one, sometimes another, sometimes several of them, unload the papers from the car, and then he drives away.

Q. What occurs after that?

A. Then I see the main spot man handing out papers to various of the hustlers, and they start walking off down Main Street to their respective corners, whatever they happen to be; and also I see that same main spot man pass out papers to the four off-spots, the hustlers that are located at Fifth and Main, or its vicinity.

Q. And during the period that you have operated on that corner, have you ever seen Abe Pierce count out the papers personally to those off-spot boys on the corner of Fifth and Main?

A. No, sir, I never have.

Q. Have you ever observed him count out the copies of the Examiner personally to these other boys who go off with Examiners down Main Street?

[1874]

(Testimony of John Deering.)

A. No, sir.

Q. As a general rule, how long does Abe Pierce stay on the corner of Fifth and Main when he makes this delivery?

A. You mean the first Peach edition?

Q. The first Peach edition.

A. Just long enough for the papers to be unloaded off his car, and for him to start up his car and drive away.

Q. This is just a matter of a few seconds, is that correct?

A. It can't be over one or two moments at the most.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) What newspaper did you say you were selling? A. Los Angeles Times.

Q. How long have you been selling the Times?

A. Well, I have been selling on the main spot, at the corner of Fifth and Main, for at least a year?

Q. At which corner is that main spot?

A. Well, up until 12:00 o'clock at night, it is the northwest corner. And then I move across the street at 12:00 o'clock to the northeast corner, but in my duties it is necessary for me to——

Q. (Interrupting) Now wait a minute; that is all I asked you; I didn't ask you what your duties were. Your spot, then, is the corner where the Rosslyn Hotel is?

A. United Cigar Store. [1875]

(Testimony of John Deering.)

Q. Well, that is in the building where the Rosslyn Hotel is? A. Yes, right by the corner.

Q. Do you stand at the corner or do you sell your papers on Fifth Street or on Main street?

A. Right at the corner of Fifth and Main.

Q. Right at the corner. That is all.

Mr. Cosgrove: May it be stipulated that the testimony given this afternoon by the witness John Deering has no application to the Los Angeles Times case?

Mr. Mouritsen: It is so stipulated.

Mr. Compton: The same stipulation with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. Howard Binford: And the Stockholders Publishing Company?

Mr. Mouritsen: Yes. [1876]

HARRY SIEGEL

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Siegel, do you handle the Times at the present time?

(Testimony of Harry Siegel.)

A. Yes, sir.

Q. Where do you handle it?

A. At the Rosslyn.

Q. And that is near the corner of Fifth and Main?

A. On Main Street. Fifth and Main, yes sir.

Q. How long have you been on that spot?

A. A year and a half.

Q. During part of the time that you have been on that spot—strike that. How long have you handled the Times on that spot?

A. Six weeks.

Q. And prior to that time did you handle any other paper on that spot?

A. No, sir; outside the Examiner for a year and a half.

Q. You say you handled the Examiner for a year and a half? A. A year and a half.

Q. And the Examiner alone?

A. Alone. [1877]

Q. For the past six weeks you handled the Times? A. The Times, yes.

Q. And the Times alone? A. Alone.

Q. During the period while you were on that spot was your Examiner district man Abe Pierce?

A. Yes, sir.

Q. And will you describe, if you will, how you obtained the copies of the first edition of the Peach edition of the Examiner that you received during that period?

(Testimony of Harry Siegel.)

A. Well, I got the first edition at half past 6:00 at the Belmont corner off the main spot man, main spot.

Q. Is that the main spot Examiner boy?

A. Examiner boy, yes.

Q. During that period did Abe Pierce ever personally count out to you the first copies of the Peach edition that you received? A. No, sir.

Q. Did he ever count out to you personally any subsequent editions of the Examiner that you received? A. No, sir.

Q. You obtained all of the copies from the main spot boy? A. Main spot boy.

Q. Were you on that spot while Sollie Sanchez was the main spot boy? [1878] A. Yes.

Q. And did you receive your Examiners from him? A. Yes, sir.

Q. And you observed how the delivery of the first copies of the Peach edition of the Examiners have been made for the last six weeks?

A. Yes, sir.

Q. And have they been made in substantially the manner that they were during the period when you received them? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) Where did you stand when you were selling the Los Angeles Examiner at Fifth and Main? A. Where did I stand?

Q. Yes. A. At the Hotel Rosslyn.

(Testimony of Harry Siegel.)

Q. Well, it has two entrances, doesn't it, one on Main Street and one on Fifth Street?

A. One on the Annex. I mean the Hotel Rosslyn, the New Hotel Rosslyn that is where I was standing.

Q. Yes. Now, you are talking about the Annex to the Hotel Rosslyn which is on the southwest——

A. (Interrupting) The southwest; yes, sir.

Q. (Continuing) ——the southeest corner of Fifth and Main streets; is that right. [1879]

A. Yes, sir.

Q. The entrance to that annex is on Fifth Street, isn't it? A. On Fifth Street.

Q. It is about 100 yards west of Main Street, isn't it? A. Yes, sir.

Q. And you stood in the entrance to that Annex when you sold Examiners, did you?

A. Yes, sir.

Q. During the last six weeks you have been selling the Times have you been standing in the same spot? A. The same spot.

Q. When do you get your first Times newspapers in the evening? A. The first?

Q. Yes. A. When they come out?

Q. Yes; the first bunch you get in the evening.

A. The first bunch I get, I get at 6:00 o'clock.

Q. 6:00 o'clock.

A. But I get away from the—I get from the alley, out of the alley, you know, I get away from the alley about 6:00 o'clock.

(Testimony of Harry Siegel.)

Q. You are an off spot Times man?

A. An off spot Times man.

Q. Where did you say you get that first bunch of Times? [1880]

A. From the main spot man.

Q. And where is he located?

A. At Main Street, Fifth and Main, around the south side. That is the main spot.

Q. The southwest corner

A. Southwest corner; yes, sir.

Q. So the Times has its main spot on the southwest corner?

A. The southwest corner; yes, sir.

Q. Where does the Examiner have its main spot at Fifth and Main Streets?

A. It is on the other side of that——

Q. Northeast corner?

A. Northeast, northeast side, the Belmont.

Q. Over at the Belmont Cafe.

A. Yes, the Belmont.

Q. After you get your Times at 6:00 o'clock then you go to the entrance to the Rosslyn Annex, do you, to sell them?

A. No, sir; not the Annex, the New Hotel Rosslyn?

Q. Oh, the New Hotel Rosslyn?

A. Yes. That is where I sell them, yes.

Q. You sell them right there at the entrance on Sixth? A. On Sixth Street.

Mr. Mouritsen: On what street?

(Testimony of Harry Siegel.)

Mr. Hall: On Fifth Street.

Q. (By Mr. Hall) Is it Fifth Street?

A. On Fifth Street; yes, sir. [1881]

Q. And that entrance to the hotel where you sell the Times is a hundred yards or so west of Main Street, isn't it? A. A hundred yards.

Trial Examiner Kennedy: Any thing further?

Q. (By Mr. Hall) So that commencing about 6:00 o'clock you are in that entrance selling your papers, from then on; is that correct?

A. From then on, yes.

Q. When do the Peach editions of the Examiner come into that intersection?

A. Into the section?

Q. Into that corner or that intersection? When are they dumped there, the first bunch?

A. Half past 6:00.

Q. Half past 6:00. At that time you are standing in the entrance, selling your Times, aren't you?

A. The Times, yes, sir.

Mr. Hall: That is all.

Trial Examiner Kennedy: Anything further with this witness?

Redirect Examination

Q. (By Mr. Mouritsen) How old are you, Mr. Siegel? A. 43.

Q. When you say that you are standing in the entrance of the Hotel Rosslyn, selling Times, is that out on the sidewalk [1882] in front of it?

A. Out on the sidewalk in front of it.

Mr. Mouritsen: That is all.

(Testimony of Harry Siegel.)

Trial Examiner Kennedy: You answered a question about a hundred yards. Have you ever measured that distance?

The Witness: A hundred yards?

Trial Examiner Kennedy: Yes.

The Witness No, sir.

Mr. Mouritsen: May it be stipulated that the testimony of the witness Harry Siegel has no application to the Los Angeles Times case?

Mr. Mouritsen: I believe some of the cross examination did have, Mr. Cosgrove.

Mr. Cosgrove: Some cross examination?

Mr. Mouritsen: Yes.

Mr. Cosgrove: Well, other than some of the cross examination may it be stipulated that it has no application to the Los Angeles Times?

Mr. Mouritsen: Other than cross examination it may be so stipulated. [1883]

Mr. Compton: Will you stipulate that none of the testimony of the witness Harry Siegel is intended to have any application to the case of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. Howard Binford: And the Stockholders Publishing Company?

Mr. Mouritsen: So stipulated. [1884]

Thursday, June 27, 1940

Met, pursuant to adjournment, at 9:30 o'clock a. m. [1887]

Mr. Mouritsen: Mr. Examiner, just in the event

that there might be any question with reference to the union's intended meaning of what is a "temporary newsboy" in the second amended petition filed in the matter of Hearst Publications, Inc., Los Angeles Evening Herald and Express Department, which is in evidence as Board's 1-BB, I think that the record should show that the union's intended meaning of "temporary newsboy" is that a "temporary newsboy" is a full time newsboy or check man who has been engaged in the street sale of the Los Angeles Evening Herald and Express for a period of 30 days or less;

And that the term "casual newsboy" is synonymous with "bootjacker."

Also, with reference to the second amended petition filed in the matter of Stockholders Publishing Company, Inc., XXI-R-927, which is in evidence as Board's Exhibit 1-Y, that the union's intended meaning with reference to a "temporary newsboy" in that matter is that a "temporary newsboy" is a full time newsboy or check man who has been engaged in the street sale of the News for a period of 30 days or less; [1902]

And also that the term "casual newsboy" is synonymous with "bootjacker."

Mr. Compton: Mr. Mouritsen, will it be stipulated that the answer and motion heretofore filed by the Los Angeles Evening Herald and Express will be deemed addressed to the petition as amended to date, and also as explained by the union's contention?

Mr. Mouritsen: So stipulated.

Mr. L. B. Binford: I believe we have that stipulation already, except as it might apply to the remarks just made.

Mr. Mouritsen: Yes.

Mr. L. B. Binford: That will be so stipulated?

Mr. Mouritsen: Yes, that may be so stipulated.

ROBERT L. SMITH

a witness recalled by and in behalf of the Stockholders Publishing Company, having been previously duly sworn, was examined and further testified as follows:

Direct Examination

Trial Examiner Kennedy: You have been on the stand be- [1903] fore?

The Witness: Yes.

Q. (By Mr. L. B. Binford) Mr. Smith, under date of June 18, 1940, in the morning session, you gave certain testimony and there is reported in Volume 8 at page 977 your answer to a certain question; and I am now reading from line 25, page 977 of the transcript, which reads as follows:

"You understand that it was the Herald organization that took over the joint distribution and sale?"

And I would ask you if you would please state just what you mean in using the words "joint distribution and sale."

A. Well, I more particularly had reference, of

(Testimony of Robert L. Smith.)

course, to the sale of the papers by the newsboys and intended no reference to the activities or distribution engaged in by the district men since, of course, those were independent as to our organization and independent as to the Herald——

Q. And by the use——

A. And always have been.

Q. And by the use, therefore, of the word "distribution" you did not mean to refer to the distribution made by the district men of the respective papers? A. No.

Mr. L. B. Binford: That is all.

Cross Examination

Q. (By Mr. Mouritsen) When you referred to the "Herald [1904] organization" you referred to the Herald newsboys; is that correct?

A. Yes, in this respect: That the Herald, because of its longer period of years in the field and its larger street sale, was made available for sale in more locations than the News; and it was practical upon going to a joint sale to have, in the main, the same outlets that previously had sold the Herald also sell the News.

Mr. Cosgrove: May it be stipulated that the testimony of the witness Robert L. Smith has no application to the Los Angeles Times case?

Mr. Mouritsen: Yes; that may be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: So stipulated. [1905]

Trial Examiner Kennedy: Now, is it admitted by the Stockholders Publishing Company that Board's Exhibit 9 contains a list of employees of that corporation?

Mr. L. B. Binford: It is admitted by Stockholders Publishing Company that Board's Exhibit 9 contains a list of persons who are on the payroll of Stockholders Publishing Company as wholesalers of papers, but not as newsboys.

Trial Examiner Kennedy: Well, do you take a position as to whether or not they are employees within the definition of the National Labor Relations Act?

Mr. L. B. Binford: We accept the—strike the word "accept"—we take the position that such boys who are wholesalers and who are on our payroll are our employees for that restricted purpose only, and they are not on our payroll as newsboys in any shape, form or fashion. [1911]

Mr. Compton: I would like to offer something. Mr. Mouritsen, have you had the opportunity to check the accuracy of the quotations in my proposed exhibits as to Rule 8.19 of the rules of the California Unemployment Insurance Act and Ruling 64 of the Social Security Tax Unit, which I gave you yesterday?

Mr. Mouritsen: I have not, Mr. Compton, but if you will present them and say they are correct I will accept them.

Mr. Compton: I will so present them and say that

they are correct quotations. At this time I offer as Evening Herald and Express Exhibit No. 7 Rule 8.19 of the rules under the California Unemployment Insurance Act, being Chapter 352, Laws of 1935 as amended, as revised effective May 1st, 1938. It is Evening Herald and Express exhibit next in order, and [1912] I believe it is 7.

Mr. Hall: It is Herald and Express exhibit, isn't it, not the Stockholders'?

Mr. Compton: Yes. I corrected that. I next offer Social Security Tax Unit Ruling No. 64 as Evening Herald and Express Exhibit No. 8. Is more than one needed?

Trial Examiner Kennedy: I beg your pardon?

Mr. Compton: Is more than one copy needed?

Trial Examiner Kennedy: No. No, not unless it is a pleading.

Mr. Compton: If the Examiner please, I wish at this time——

Mr. Hall: Might I interrupt, Mr. Compton?

Mr. Compton: Yes.

Mr. Hall: Mr. Mouritsen, will it be stipulated that the exhibits just offered as the Herald and Express Exhibit No. 7 and Herald and Express Exhibit No. 8, may be applicable in the case involving Los Angeles Examiner?

Mr. Cosgrove: And Los Angeles Times?

Mr. L. B. Binford: And Stockholders Publishing Company?

Mr. Mouritsen: That may be so stipulated.

Trial Examiner Kennedy: Are you offering them in evidence?

Mr. Compton: Yes.

Trial Examiner Kennedy: Any objection? [1913]

Mr. Mouritsen: No objection.

Trial Examiner Kennedy: Received.

(The documents referred to were received in evidence and marked Evening Herald and Express Exhibit No. 7 and Evening Herald and Express Exhibit No. 8.) [1914]

PATRICK COMORRE

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and further testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Comorre, I show you a document that has been marked Board's Exhibit 11 in evidence, and I will direct your attention to a box in the center of the picture between two racks. I will ask you if you made this picture?

A. I did. I took that picture.

Q. Did you take it with an ordinary commercial kokak? A. Well, it is mine.

Q. Is it a regular——

A. Regular kokak, that is right.

Q. And I direct your attention to certain let-

(Testimony of Patrick Comorre.)

ters that appear beneath the placards that are on the box, and ask you if you examined what the printed matter on the box underneath the placards was?

A. I did. I pulled the card over and looked at it before I [1925] took a picture of it.

Q. And what was the legend that appeared upon the box?

The Witness: Los Angeles Herald and Express.

Q. (By Mr. Mouritsen) Was this a box used by a Herald and Express newsboy?

A. That is right.

Q. At what place?

A. Seventh and Alvarado.

Q. And do you recall the newsboy's name?

A. Yes, I do.

Q. What was it? A. Nickerson.

Q. And have you observed such boxes in use by Herald and Express newsboys at other places within the city of Los [1926] Angeles?

A. Yes; mostly in the outskirts, but there are some in the outer part of the downtown area.

Mr. Mouritsen: I believe, if the Examiner please, before my offer was concerned with the racks, but now I offer the picture in evidence, that part of it that bears the likeness of the box.

Trial Examiner Kennedy: Overruled. Received in evidence.

(The document referred to was received in evidence and marked Board's Exhibit No. 11.)

Mr. Mouritsen: That is all. [1927]

Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-C-1840

In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

Case No. XXI-C-1843

In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

November 10, 1941.

The hearing in the above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

Before: W. P. Webb, Trial Examiner.

Appearances:

JAMES A. COBEY, Attorney for the National Labor Relations Board. [1929]

MESSRS. FLINT & MacKAY, By H. S. MacKAY, Jr., EDWARD L. COMPTON and D. W. HAMBLIN, 1232 Rowan Building, 458 South Spring Street, Los Angeles, California, appearing for the respondent, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

MESSRS. COSGROVE & O'NEIL, By T. B. COSGROVE and F. B. YOAKUM, Jr., 1031 Rowan Building, Los Angeles, California, appearing for the respondent, The Times-Mirror Company.

PATRICK COMORRE, 212 West 3rd Street, Los Angeles, California, appearing for Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. [1930]

Trial Examiner Webb: Gentlemen, if all the parties in interest are present, we will open the hearing.

This is a formal hearing in the matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., Case No. XXI-C-1840; also in the matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., Case No. XXI-C-1843.

Off the record.

(Discussion off the record.)

Trial Examiner Webb: Back on the record.

Under order of the Board dated October 23, 1941, these two cases are consolidated.

Counsel will please state all appearances for the record.

Mr. Cobey: James A. Cobey appearing for the National Labor Relations Board.

Trial Examiner Webb: In both cases?

Mr. Cobey: In both cases.

Trial Examiner Webb: Now, in case No. 1840?

Mr. Compton: Flint & MacKay, H. S. MacKay, Jr., Edward L. Compton, and D. W. Hamblin for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

Trial Examiner Webb: By Mr. Compton?

Mr. Compton: That is correct. [1932]

Trial Examiner Webb: Is anyone representing the union?

Mr. Comorre: Patrick Comorre for the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.; secretary.

Trial Examiner Webb: Now, just a moment. Will you kindly give your address, Mr. Compton?

Mr. Compton: 1232 Rowan Building, 458 South Spring Street, Los Angeles, California.

Trial Examiner Webb: And your address, Mr. Comorre?

Mr. Comorre: It is room 304 Currier Building, 212 West Third Street, Los Angeles, California.

Trial Examiner Webb: Now, The Times-Mirror case?

Mr. Yoakum: Cosgrove & O'Neil, by T. B. Cosgrove and F. B. Yoakum, Jr., Mr. Yoakum being present, for The Times-Mirror Company. Our address is 1031 Rowan Building, Los Angeles, California.

Trial Examiner Webb: The Trial Examiner appearing for the National Labor Relations Board is W. P. Webb, Washington, D. C. [1933]

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning. [1935]

(Thereupon the documents referred to were marked as Board's Exhibits 1-A to 1-I, both inclusive, for identification.)

Trial Examiner Webb: Any objection?

Mr. Yoakum: If the Court pleas', may it be stipulated that these documents have no reference to the Los Angeles Times, Case No. 1843? [1939]

Mr. Cobey: I might state, Mr. Examiner, that there are just two copies of two documents included in those pleadings which also apply to the Times, namely, the order consolidating cases——

Trial Examiner Webb: Let's call it by its name, The Times-Mirror Company.

Mr. Cobey: The Times-Mirror Company. (Continuing) ——and the second document is the order designating yourself as Trial Examiner, and I have had copies of those documents made, and they are included as a part of Board's Exhibit 2, which I

am about to introduce with respect to The Times-Mirror.

Trial Examiner Webb: Does that satisfy your objection?

Mr. Yoakum: Yes, that will be all right.

Trial Examiner Webb: Do you withdraw your objection?

Mr. Yoakum: I didn't make any objection. It was just to get the understanding that it didn't apply except as to the order of consolidation and the order designating yourself as Trial Examiner. Is that your understanding?

Mr. Cobey: Yes, that is my understanding.

Mr. Yoakum: I have no objection.

Trial Examiner Webb: They are admitted.

(Thereupon the documents heretofore marked as Board's Exhibits 1-A to 1-I, both inclusive, for identification, were received in evidence.) [The pertinent exhibits here referred to are set out at pages 1 to 17 and 244 to 258 of this printed record.] [1940]

Trial Examiner Webb: Any objection?

Mr. Yoakum: No objection.

Trial Examiner Webb: They are admitted.

(Thereupon the documents heretofore marked as Board's Exhibits 2-A to 2-I, both inclusive, for identification, were received in evidence.)

BOARD'S EXHIBIT No. 2-B.

[Title of Board and Causes.]

Case No. XXI-C-1840
Case No. XXI-C-1843

ORDER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the Act, having been filed in the above-entitled cases, and the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36(b) of National Labor Relations Board Rules and Regulations—Series 2, as amended, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., October 23, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN
Executive Secretary

Mr. Cobey: I should like to offer at this time, to be marked as Board's Exhibit 3, for identification, with the appropriate subdivisions, certain prior proceedings had before the Board, known as In the Matter of Stockholders Publishing Company, Incorporated and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., et al. These are cases Nos. R-1923 to R-1926, inclusive. [1943]

Trial Examiner Webb: Any objection?

Mr. Yoakum: Yes. If the Court please, except insofar as the opinion, the various amendments and supplemental decisions refer specifically to the case of The Times-Mirror Company, being local Case No. XXI-R-1062 and R-1925, we object on the ground that the same have no relevancy as to The Times-Mirror Company, are hearsay and incompetent as to it. [1945]

Trial Examiner Webb: I don't suppose that anything appearing in this supplemental decision and certification of representatives which doesn't apply to The Times-Mirror Company would be used against it, in any event?

Mr. Yoakum: Well, if we could have that understanding, your Honor, that it is the position that the matters that refer to the Times are the only ones that are intended in this proceeding to be applicable to the Times, we could withdraw the objection. We just don't want the record to be in such shape that there can be any possible ground for claiming that what the record shows with reference to activities of the newsboys of the Herald, the Los Angeles Examiner and the Daily News, all of whom were involved in the prior proceedings, have any bearing upon or binding effect upon the Times with respect to the status between the Times and its newsboys.

I might say that throughout the prior proceeding we had innumerable stipulations to that effect. For example, a newsboy selling the Examiner would be put on the stand and interrogated at considerable length, and in the course of his examina-

tion counsel for the Board and counsel for all papers and the Examiner entered into a stipulation that it didn't pertain to any case except the Examiner case, if that happened to be the boy who was on the stand. That is no more than I am asking here.

Trial Examiner Webb: That appears to be fair. Have you [1947] anything further to say, Mr. Cobey?

Mr. Cobey: The only thing I wanted to point out was that, in so far as the Board is concerned, we are perfectly willing to allocate this evidence to the particular newspapers, and Mr. Yoakum is quite right, that in the prior proceedings such stipulations were entered into, but at this time I don't think it is necessary for the Board to state what evidence should be allocated to which paper; I mean, conclusively and in binding fashion or definitive fashion at all.

We are perfectly in agreement with Mr. Yoakum's position that evidence relating to the practices of one paper should not bind the other paper, but where the same newsboys sell the papers of both publishers, it seems to me that you have a difficult job of deciding whether or not the evidence should be allocated to the one or the other, or whether it should not be allocated to both.

Trial Examiner Webb: It might be relevant in a witness' testimony with respect to methods ordinarily pursued by newspapers, especially Los Angeles newspapers, in the distribution of the papers.

As background, that might become relevant. I don't know. I take it, you are introducing these documents as just what they purport to be.

Mr. Cobey: Yes, sir, that is all.

Trial Examiner Webb: Official documents——

Mr. Cobey: That is right. [1948]

Mr. Cobey: I think the primary purpose, Mr. Examiner, is simply to give the respondents notice of the prior proceedings of the Board, upon which the Board will rely.

Trial Examiner Webb: The objection is overruled. Any further objection?

Mr. Compton: Yes. If your Honor please, on behalf of the Los Angeles Evening Herald & Express Department of the Hearst Publications, Incorporated, an objection is laid to all of Exhibit 3, Exhibits 3-A to 3-G, inclusive, except in so far as those exhibits on their face tend to refer to matters involved in Case No. R-1924, on the ground that the [1949] same are incompetent, irrelevant and immaterial, and hearsay as to the Los Angeles Evening Herald & Express Department of the Hearst Publications, Incorporated.

Trial Examiner Webb: I don't see any reference in these documents to Case No. 1924.

Mr. Cobey: Mr. Examiner, that is one of the consolidated cases. In the consolidated cases there are case numbers 1923 to 1926, inclusive.

Trial Examiner Webb: Oh, yes. That is included, yes.

The objection is overruled. They are admitted.

(Thereupon the documents heretofore marked as Board's Exhibits 3-A to 3-G, both inclusive, for identification, were received in evidence.) [1950]

PATRICK COMORRE

a witness called for and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Cobey) Will you please state your full name? A. Patrick Comorre.

Q. Where do you live, Mr. Comorre?

A. 1808 Kemper Street.

Q. What is your present occupation?

A. Secretary of the Newsboys Union.

Q. When you say "the Newsboys Union", are you referring to [1951] the union which is a party in this proceeding? A. Yes, sir.

Trial Examiner Webb: At this point I believe it would be a good idea to have it understood that as we proceed we will adopt some short names for the respondents, and also in referring to the union as the union. I don't think there is any other union involved here, is there?

The Witness: No.

Mr. Cobey: I would suggest that we refer to this particular local as the union, and, also, refer to The Times-Mirror Company as the Times, and

(Testimony of Patrick Comorre.)

the Hearst Publications, Incorporated, as Hearst.

Trial Examiner Webb: Is that satisfactory?

Mr. Compton: I would suggest that as to this respondent, we call it the Herald-Express, for the reason that the Examiner is also a Hearst paper.

Mr. Cobey: Yes. Thank you.

Mr. Compton: For that reason it would be better if we called this respondent the Herald-Express or the Herald.

Trial Examiner Webb: Yes. It seems to be referred to in the complaint as the Herald.

Mr. Cobey: Yes, that correction is perfectly agreeable to me.

Trial Examiner Webb: That will be the Herald, respondent, and the Times, respondent, and the union. [1952]

Mr. Yoakum: That is satisfactory.

Mr. Compton: Yes.

Mr. Cobey: That is satisfactory.

Trial Examiner Webb: Proceed.

Q. (By Mr. Cobey) Mr. Comorre, will you state whether or not at the present time you hold any office in the union?

A. Yes, I do. I am the secretary of the Newsboys Union.

Q. How long have you held that office?

A. Since September, 1940.

Q. Now, prior to September, 1940, were you an officer of the union or not?

A. Yes, I was secretary of the Labor Board

(Testimony of Patrick Comorre.)

Committee or the Legal Committee, that was handling the Board case.

Q. What was the function of that committee?

A. Well, it was to take care of the work and prepare stuff to file charges, or something like that, with the Labor Board, and prepare for license, and so forth; sort of an advisory committee for the union, to take up those matters.

Q. When was that committee set up?

A. Oh, well, there has always been a legal committee, more or less, since the union has been in existence.

Q. Can you tell us whether or not that committee functioned in the prior representation proceedings? A. Yes, it did.

Mr. Cobey: Can it be agreed that the hearing in the [1953] prior representation proceedings took place in June of 1940?

Mr. Yoakum: I think it can.

Mr. Cobey: I think the Board's exhibits will show it ran from June 10th to June 27th, 1940.

Mr. Yoakum: June 10th I know is the date it began. I don't know the date of closing.

Mr. Cobey: Board's Exhibit 3 will show that.

Mr. Yoakum: That is right.

Mr. Compton: So stipulated.

Q. (By Mr. Cobey) Then, as I understand it, Mr. Comorre, between June of 1940 and September of 1940 you were chairman of this legal committee of the union? A. Yes, sir.

(Testimony of Patrick Comorre.)

Q. And from September 1940 to date you have been secretary?

A. Well, may I make a correction?

Q. Yes.

A. I was secretary of that committee. You said "chairman." I was secretary of the committee.

Q. You were secretary of the legal committee?

A. That is right.

Q. And in September 1940 you became secretary of the union?

A. And still secretary of the committee.

Q. Yes. A. Yes.

Mr. Cobey: For the purpose of saving time, I am going to [1954] ask a rather general question, and counsel may wish to object to it.

Q. (By Mr. Cobey) You have been connected with the union practically since its inception, have you not?

A. Well, I have been with the C.I.O. since its earliest steps here in California, and then I was assigned to the Newsboys Union in 1938.

Q. I think it is correct, is it not, that you testified with respect to the operations and functioning of the union—— A. Yes.

Q. ——in this prior proceeding in June 1940, at which time the hearing was held?

A. I believe I did. Yes, I believe I did.

Q. Now, has there been any change in the functioning and general operation of the union since June, 1940?

(Testimony of Patrick Comorre.)

A. No, not any big changes. Maybe some little, minor changes. Maybe some officer left or quit, or some shop steward changed, or something like that; not any major changes.

Q. I see. The union has since June 1940 been holding regular meetings? A. Yes, sir.

Q. And is collecting dues regularly from its membership? A. Yes, sir.

Q. Can you tell us whether or not the union has also been attempting to serve as bargaining representative for its [1955] members with the various publishers? A. They have.

Q. Mr. Comorre, can you tell us whether or not your union is affiliated with any national organization?

A. It is. It is affiliated with the National C.I.O. in Washington, D. C.

Q. That is the Congress of Industrial Organizations? A. That is correct.

Q. How long has it been so affiliated, roughly?

A. Well, this Congress of Industrial Organization has been changed. It used to be the Committee of Industrial Organizations and we were a part of the organization at that time, and then it was changed to Congress of Industrial Organizations and we were issued a charter immediately under the change of that name.

Q. Would it be correct to say that since its inception the union has been affiliated with the C.I.O.?

A. It would.

Q. And it is so affiliated today?

(Testimony of Patrick Comorre.)

A. It is.

Mr. Cobey: That is all.

Mr. Yoakum: No questions.

Mr. Compton: No questions.

Trial Examiner Webb: Now, don't you think we should have some further evidence in the record with respect to the [1956] appropriate unit?

Mr. Cobey: I don't think so, Mr. Examiner, because the appropriate unit has already been found by the Board in its prior proceedings, and I see no reason for any further evidence.

Q. (By Trial Examiner Webb) Mr. Comorre, it states here in the complaint, in respect to the Herald, respondent, that the unit appropriate for purposes of collective bargaining consists of all employees of the respondent who are full-time employees and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys. Is it the contention of the union that that is the appropriate unit now?

A. Well, I don't think there has been any change, as far as that is concerned.

Q. And the union considers that that is the appropriate unit for purposes of collective bargaining? A. That is right.

Mr. Yoakum: That refers to the Herald case only, your Honor,—the present question?

Trial Examiner Webb: Yes.

Q. (By Trial Examiner Webb) Now, the com-

(Testimony of Patrick Comorre.)

plaint in respect to the Times, respondent, alleges that the unit for the purposes of collective bargaining consists of all employees of respondent "who are newsboys engaged in the street sale of the Times at established spots, 4 or more hours a day, 5 [1957] or more hours a week."

Mr. Yoakum: Days.

Trial Examiner Webb: What is that?

Mr. Yoakum: "Five or more days a week."

Trial Examiner Webb: Oh, yes. This is a very indistinct copy that I have.

Q. (By Trial Examiner Webb) (Continuing) "——five or more days a week within Los Angeles and Glendale, California, excluding temporary newsboys."

Now, is that the unit that the union considers appropriate in connection with the Herald, respondent? A. The Times, you mean?

Q. How is that?

Mr. Cobey: In connection with the Times, sir.

Q. (By Trial Examiner Webb) In connection with the Times, I mean?

A. That is right.

Mr. Cobey: It seems to me to appear from Board's Exhibit 3 that the union has been certified as the exclusive bargaining representative of the employees within those units.

Trial Examiner Webb: But I want to know if it is the contention of the union that these are the appropriate units at this time.

(Testimony of Patrick Comorre.)

The Witness: Yes, I think so. I mean, there has been little change. We have had a few more employees come into the [1958] union, or something like that, but that doesn't have any effect on the people——

Trial Examiner Webb: Not at all.

The Witness: Yes, that is correct.

Q. (By Trial Examiner Webb) You say the union is duly chartered by the International?

A. By the C.I.O. directly. Not by the international; directly by the C.I.O.

Trial Examiner Webb: Any further questions?

Mr. Yoakum: No questions by the Times.

Mr. Compton: No questions.

Mr. Cobey: No further questions by the Board.

Trial Examiner Webb: All right. [1959]

Mr. Yoakum: Now, as an exhibit to the complaint in the Times case and in connection with our affirmative defense, which we set up, is the decision in an Industrial Accident Commission case, entitled, Pendergast against Times-Mirror Publishing Company, and we at this time as Times Exhibit No. 1 offer a certified copy and a copy of the certified copy in evidence. [1962]

Trial Examiner Webb: Any objection?

Mr. Cobey: Yes. Mr. Examiner, I would like to object to its admission on the ground it is irrelevant to the issues in this case. It is a decision

of the Industrial Accident Commission, under the State Workmen's Compensation legislation and it pertains to the issue as to whether or not, for the purposes of that particular state legislation, the news vendors are employees and, therefore, within the protection of the Workmen's Compensation Act. [1963]

Trial Examiner Webb: Have you anything further to say in respect to what counsel for the Board has said, Mr. Yoakum?

Mr. Yoakum: Yes, your Honor. This decision in this Pendergast case was rendered at about the same time that the prior Board hearing commenced. The exact date was August 9, 1940. The man involved was a news vendor of the Times at the time of the former hearing, as appears from the record in that case.

We allege in our answer here that the activity of this news vendor is the same as the activities of those Times news vendors who testified in the representation proceeding, so we are offering this ruling, and if it is admitted, we will follow up with an offer of the transcript of the proceedings before the Industrial Accident Commission.

I think it is decidedly relevant to the inquiry. Whether the Board will agree or not with the conclusion, I can't predict. Mr. Kennedy, who presided at the prior hearing, expressed considerable interest in rulings of state boards, and I think for that reason that the matter is decidedly material. It certainly is responsive to an issue raised by

the pleadings. We affirmatively set this matter up as a [1964] defense. [1965]

Trial Examiner Webb: I don't object to admitting in evidence the document which has been offered here, which is the findings of fact and decision. The objection is overruled. It is admitted.

(Thereupon the document referred to was marked as Times Exhibit No. 1, and received in evidence.) [1969]

Mr. Yoakum: We next offer as Times Exhibit 3 a certified copy of findings and award of the Industrial Accident Commission of the State of California in the case entitled: Ike Reich against The Times-Mirror Company, et al., filed August 25, 1941. This is similar to Exhibit No. 1.

Trial Examiner Webb: In view of the fact that you are now introducing this other document, which purports to be the findings of the State Commission with respect to this other individual, I am inclined to reject now the document that I admitted in respect to Pendergast and put that also in the rejected documents. I think I shall do that.

So, Miss Reporter, you will take that document, the one of Pendergast, the one I admitted, and I withdraw it from the admitted documents and put it in the rejected exhibits.

(Thereupon the document, heretofore received in evidence as Times Exhibit No. 1, was rejected and is so returned herewith.) [1972]

Trial Examiner Webb: This (indicating), also, will go into the rejected file.

Mr. Yoakum: Did we have a ruling on Exhibit No. 3?

Trial Examiner Webb: I sustained the objection to that.

Mr. Yoakum: I didn't hear one made, your Honor.

Trial Examiner Webb: I don't believe there was. I didn't ask, but it being a similar document, I simply rejected it without objection, and it goes into the rejected documents.

(Thereupon the document referred to was marked as Times Rejected Exhibit No. 3, and is so returned herewith.) [1973]

Mr. Yoakum: I understand correctly, your Honor, that we have an automatic exception to these rulings? [1974]

November 12, 1941.

The hearing in the above-entitled matter came on for hearing, pursuant to adjournment, at 2:00 o'clock p. m. [1980]

Mr. Corey: I should like to offer, to be marked for identification as Board's Exhibit 4, a stipulation in the matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. This stipulation

is dated November 12, 1941 and is signed by counsel for the aforementioned parties. I would like to offer it, to be marked for identification as Board's Exhibit 4. [1983]

Trial Examiner Webb: The stipulation is received in evidence and may be marked accordingly.

(Thereupon the document referred to was marked as Board's Exhibit No. 4, and received in evidence.)

BOARD EXHIBIT No. 4

CONGRESS OF INDUSTRIAL ORGANIZATIONS
CIO

Certificate of Affiliation

By these presents, Be It Known That:

This Certificate of Affiliation with such rights and privileges as may from time to time be determined is hereby granted to

Newsboys.
Local Industrial Union, No. 75, Los Angeles, California

Charter Members

Al. Schwartz	Leonard Sherman
Louis Schwartz	Phillip Bloom
David Small	Ben Rothman
Abe Pipesburg	Pat Commore
Rubin Charon	Art Page

This Certificate of Affiliation with all of the rights and privileges appurtenant thereto is granted upon the condition that the said Union shall at all times comply with the Constitution and the Rules and the Regulations thereunder of the Congress of Industrial Organizations; and in the event of violation thereof this Certificate may, pursuant to said Constitution, and Rules and Regulations be revoked, whereupon all rights and privileges appurtenant thereto shall be annulled.

So long as this condition shall be duly performed in all respects, the Congress of Industrial Organizations does hereby agree to promote and assist the said Union in the exercise of all of the rights and privileges secured hereunder.

In Witness Whereof we have hereunto attached our signatures and caused the seal of the Congress of Industrial Organizations to be affixed.

Dated this 16th day of November, 1938.

[Seal] JOHN L. LEWIS,
President.
JAMES B. CAREY,
Secretary.

Mr. Cobey: I should like now to offer this exhibit, which [1985] has been marked as Board's Exhibit 5, for identification, in evidence.

Mr. Yoakum: Is this Exhibit 5 you are now offering?

Mr. Cobey: Yes.

Mr. Yoakum: No objection.

Trial Examiner Webb: It is admitted.

(Thereupon the documents heretofore marked as Board's Exhibit 5 for identification, were received in evidence.) [Exhibit No. 5 is set out at page 283 of this printed record.]

Mr. Yoakum: It is understood in connection with Exhibit 4 that that refers only to the Herald case and not to the case of the Los Angeles Times?

Mr. Cobey: That is correct.

Trial Examiner Webb: I think it so states in the stipulation.

Mr. Compton: And in respect of Exhibit No. 5, the same ruling would be made, that it applies only to the Los Angeles Times case and not to the case against the Los Angeles Evening Herald & Express? [1986]

Mr. Cobey: The Board's position would be identical.

Trial Examiner Webb: I don't see that that is a modification of either one of the stipulations, as they show for themselves.

Mr. Yoakum: I don't believe it is necessary to renew the motion which we have on file, the motion to dismiss, so without waiving any rights under that, I will proceed.

Trial Examiner Webb: Certainly. That motion is still pending and, as I stated when the hearing first opened, the ruling is reserved. [1987]

Mr. Compton: On behalf of the Los Angeles Evening Herald & Express, without waiving our motion to dismiss, heretofore filed herein, I would like to point out that we have filed in this action, in the office of the Clerk of the Labor Board, an affidavit of service of the motion to dismiss and the answer upon the Newsboys Union.

It is my recollection that at the session of last Monday Mr. Comorre admitted the receipt of those documents and, therefore, it would not be necessary at this time to introduce the affidavit of service. [1991]

That is correct, is it not, Mr. Cobey?

Mr. Cobey: I think your recollection is correct. If it is not, why, Mr. Comorre is willing to state right now, I am sure, that he received those documents.

Mr. Comorre: Are those the documents in regard to the answer to the complaint?

Mr. Compton: Yes.

Mr. Comorre: Yes.

Mr. Compton: The affidavit of service was actually on file at the time of the commencement of this hearing, but, apparently, had not been called to Mr. Cobey's attention.

Mr. Cobey: That is correct. It has been called to my attention since then.

Mr. Compton: If the Court please, it had been my intention to offer the same exhibits on behalf of the Los Angeles Evening Herald & Express that were offered by the Times, being Exhibits, Times Exhibits Nos. 1 to 5, inclusive. It had been my hope that we

would not need to duplicate those exhibits. Therefore, I would like at this time to offer a stipulation to Mr. Cobey that the exhibits, Times Exhibits 1 to 5, both inclusive, were offered by the Los Angeles Evening Herald & Express and have the Court make the same ruling that [1992] was made in the Times case in respect of those exhibits. In that way we will save duplication of the exhibits and duplication of the record going back to Washington, and any further record that need be prepared.

Trial Examiner Webb: I see no reason to offer duplicate exhibits, and why should the Herald want to introduce the same exhibits that the Times has already introduced?

Mr. Compton: We want them considered in our case, as rejected exhibits, or in whatever manner the Board does consider them. It seems to me as necessary to offer them and to have them refused and considered as rejected exhibits in Case No. XI-C-1840, in order to bring them to the attention of the Board.

Trial Examiner Webb: I don't object to that at all. That may be done.

Mr. Cobey: I am perfectly agreeable to that procedure, Mr. Compton, subject to the further objection on the Board's part that, so far as I can see, none of the proffered exhibits concern the respondent, the Herald.

Mr. Compton: That is correct.

Mr. Cobey: And renewing, of course, the objections I previously made to the Times exhibits.

Mr. Compton: Yes, and by that you mean that the case in question did not concern news vendors who were selling the Los Angeles Herald & Express, but two of them concerned news [1993] vendors selling the Times and one of them selling the Examiner.

Mr. Cobey: Yes, that is the substance of my further objection, in addition to their being offered as exhibits by the Herald.

Mr. Compton: That is all right. [1994]

Mr. Cobey: At this time I should like to move to conform the pleadings to the proof. That is merely a formal motion so far as its content is concerned, and that merely covers the spelling of names, dates, and that type of matter.

Trial Examiner Webb: Is there any objection?

Mr. Yoakum: Certainly, no objection with respect to dates and spelling, but I don't like to be a party to some omnibus type of stipulation that might cover things that I don't have in mind. I don't believe that it does here, but I would appreciate it if Mr. Cobey could be specific. I don't know wherein there is any great discrepancy between dates as alleged in the pleadings and as has been shown here.

Trial Examiner Webb: I may say that is the usual motion that is made by the Board at the conclusion of the hearing, [1996] and it certainly could not possibly contain any surprise or any material amendment to the complaint. Certainly not. Otherwise, I would not grant the motion. As I understand it, it applies only to minor matters, such as he indicated, dates and names.

Mr. Cobey: Mr. Examiner, I might state that the making of that motion may be merely an excess of caution on my part, because my recollection is as Mr. Yoakum's, that there have been no errors. It is to correct errors of form, and certainly not errors of substance.

Mr. Yoakum: Thank you.

Trial Examiner Webb: The motion is granted. Anything else gentlemen? [1997]

Trial Examiner Webb: Now, in respect to the motion to dismiss the complaint, the written motion to dismiss the complaint, filed by the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), ruling on which was deferred, I now deny the motion.

The same ruling applies to the written motion to dismiss, filed by The Times-Mirror Company. That motion also is denied. [2002]

Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-C-1956

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT)

and

LOS ANGELES NEWS BOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

Case No. XXI-C-1957

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC.

and

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

Room 808, United States Post Office and Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

Tuesday, December 16, 1941.

The above-entitled matter came on for hearing, pursuant to notice, at 2:00 o'clock p. m.

Before THOMAS S. WILSON, Trial Examiner.

Appearances:

JAMES A. COBEY, Attorney for the National Labor Relations Board. [2006]

LAWLER, FELIX & HALL, By JOHN M. HALL, 700 Standard Oil Building, Los Angeles, California, appearing for Hearst Publications, Inc. (Los Angeles Examiner Department).

L. B. BINFORD, 1208 Hollingsworth Building, Los Angeles, California, appearing for Stockholders Publishing Company, Inc.

PAT COMORRE, Room 304, 212 West Third Street, Los Angeles, California, appearing for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. [2007]

Mr. Binford: Do I understand that heretofore there has been a formal order entered into by the Board consolidating the two cases before the Examiner at this time?

Trial Examiner Wilson: You will have to ask Mr. Cobey that question. I think there is.

Mr. Cobey: Yes, there has been.

Mr. Binford: For the purpose of the record, I wish to object to such consolidation order upon the following grounds: one, that we had no notice of such cases being consolidated at any given time, and therefore were not afforded any previous [2012] opportunity of objecting to such consolidation order. The objection first goes to the fact that

throughout the hearings heretofore in connection with the Union's efforts to establish the Newsboys, as employees, at all times objections were made by both the Examiner's counsel and the Stockholders Publishing Company's counsel to any testimony that was introduced in the other case; and stipulations were, in the main, as the record will disclose, procured to the effect that such testimony would not be binding upon any of the other parties to the proceedings.

Secondly, we wish to object to the consolidation upon the ground that the record discloses that the method by which the distribution of papers, handled and sold by the Examiner, and the method by which the distribution of papers handled and sold by the Stockholders Publishing Company, are entirely different. The relationship between the Stockholders Publishing Company, as publisher of the Daily News, and the so-called district men, and in turn the newsboys themselves, is an entirely different relationship, and an entirely different situation, and entirely different mechanics are involved than that which is sustained between the Examiner and their distribution system.

Mr. Hall: I would like the record to show an objection on behalf of the Los Angeles Examiner to the consolidation, upon the same grounds and for the same reasons stated by Mr. [2013] Binford.

Trial Examiner Wilson: At this time the Examiner will have to overrule those objections. [2014]

Mr. Hall: Will it be stipulated that copies of

the answer of Los Angeles Examiner, and a copy of Los Angeles Examiner's motion to dismiss complaint was served upon Mr. Comorre, representing the Union, on December 15, 1941.

Mr. Comorre: I didn't get that.

Trial Examiner Wilson: Will you read it.

(The record was read.)

Mr. Comorre: That is right.

Mr. Hall: I take it, then, there will be no occasion, Mr. Cobey, to make a part of your records, the affidavit of service which I have here showing service upon the Union of those two documents.

Trial Examiner Wilson: You admit service upon you, don't you, Mr. Cobey?

Mr. Cobey: Yes. I think the admission referred to is an admission of service upon the Union.

Mr. Hall: That is correct.

Mr. Cobey: I think their admission on the record is sufficient. [2018]

Trial Examiner Wilson: Is there any objection to the introduction of Board's Exhibit 1?

Mr. Hall: No objection.

Mr. Binford: No objection.

Trial Examiner Wilson: It will be admitted.

(Thereupon, the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 1-A-1, 1-A-2, 1-A-3, 1-A-4, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, and 1-I, were received in evidence.) [2019]

Mr. Binford: May I ask, Mr. Cobey, if it will be stipulated that Board's Exhibit 2-E and 2-F each

contain an appropriate affidavit of service on the Union.

Mr. Cobey: Yes, I am sorry I omitted that, Mr. Binford.

Mr. Binford: And also may I ask that it will be stipulated [2021] that the rights of the Stockholders Publishing Company shall not be prejudiced by reason of the originals being filed on the 16th in lieu of the 15th.

Mr. Cobey: No. I will so stipulate.

Trial Examiner Wilson: Board's Exhibit 2 will be admitted.

(Thereupon, the documents heretofore marked for identification as Board's Exhibits Nos. 2-A-1, 2-A-2, 2-A-3, 2-A-4, 2-B, 2-C, 2-D, 2-E, 2-F and 2-G, were received in evidence.)

Mr. Cobey: I would like to request at this time from Mr. [2022] Hall and Mr. Binford a statement to the effect that on behalf of their clients that they have no objection on the score of adequate notice of these proceedings.

Mr. Hall: I will so stipulate.

Mr. Binford: I will so stipulate. [2023]

Trial Examiner Wilson: It will be understood that the objection will be overruled and Exhibit 3 will be admitted.

(Thereupon, the documents heretofore marked for identification as Board's Exhibit Nos. 3, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, and 3-I, were received in evidence.)

Mr. Cobey: Mr. Examiner, I should like to offer at this time to be marked as Board's Exhibit 4 for identification, an original and one copy of a document captioned "In the Matter of Hearst Publications, Inc. (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. XXI-C-1956. Stipulation."

This document is dated December 15, 1941, and it is signed by John M. Hall on behalf of the Examiner; Pat Comorre on behalf of the Union; and myself on behalf of the Board.

(Thereupon, the document referred to was marked as Board's Exhibit No. 4, for identification.)

Trial Examiner Wilson: I suspect there is no objection.

Mr. Hall: No objection. [2027]

Trial Examiner Wilson: It will be admitted.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 4, was received in evidence.) [Exhibit No. 4 is set out at page 280 of this printed record].

Trial Examiner Wilson: May I see that?

Mr. Cobey: Certainly.

I should like to offer to be marked for identification as Board's Exhibit 5, the document captioned "In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., case number XXI-C-1957. Stipulation."

This document is dated December 11, 1941, and is signed by L. B. Binford and Howard M. Binford on behalf of the News; Pat Comorre on behalf of the Union; and myself on behalf of the Board. I am offering an original and one copy, and the original bears an affidavit of service by mail upon the Union.

(Thereupon, the document referred to was marked as Board's Exhibit No. 5, for identification.) [2028]

Trial Examiner Wilson: I see. I will overrule the objection at this time and allow the document in evidence.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 5, was received in evidence.) [2029]

PATRICK COMORRE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Wilson: Will you state your full name?

The Witness: Patrick Comorre, 1808 Kemper Street, Los Angeles, California.

Direct Examination

Q. (By Mr. Cobey) What is your present occupation, Mr. Comorre?

(Testimony of Patrick Comorre.)

A. Secretary of the Newsboys Union.

Mr. Cobey: Might it be stipulated that when Mr. Comorre refers to the Newsboys Union, he is referring to the union that is a party to these proceedings.

Mr. Hall: So stipulated.

Mr. Binford: So stipulated.

Q. (By Mr. Cobey) Mr. Comorre, will you state whether or not at the present time you hold any office in the union?

A. I do. I am secretary of the Newsboys Union.

Q. How long have you held that office?

A. Since September, 1940.

Q. Prior to September, 1940, did you or did you not hold any office in the union?

A. Yes, I did. I was the organizer of the Newsboys Union. [2030]

Mr. Cobey: Will it be stipulated that the hearing in the consolidated representation proceedings, that is, cases numbers R-1923 to 1926, inclusive, took place from June 10, to June 27, 1940?

Mr. Binford: If you made that statement as a fact it will be so stipulated.

Mr. Cobey: I make such a statement.

Mr. Hall: I will make such a stipulation.

Mr. Binford: Yes.

The Witness: May I make one correction on that? I was the chairman of the Labor Board Committee that was handling Labor Board cases at that time.

(Testimony of Patrick Comorre.)

Trial Examiner Wilson: Chairman of what?

The Witness: Chairman of the Labor Board Committee that was handling Labor Board cases. I was the chairman on the Labor Board Committee of the Newsboys Union.

Trial Examiner Wilson: I understand.

Q. (By Mr. Cobey) Then as I understand it, Mr. Comorre, at the time of this representation hearing, the one from June 10, to June 27, 1940, you were chairman of a committee for your union, which was representing your union at that hearing.

A. That is right.

Q. All right. Now, I think you stated that in September of 1940 you became secretary of the union? A. That is right. [2031]

Q. Now, between the date of the aforementioned hearing, that is, June 10 to June 27, 1940, and September, 1940, did you or did you not hold any office in the Union?

A. Yes, I did. I was chairman of what we called the Legal Committee, that was representing the union in the Labor Board cases.

Q. Will you state whether or not you were the chairman of that committee or its secretary?

A. I believe I was the secretary. That is right. I was the secretary. Mr. Ely was the chairman of the committee.

Q. Mr. Comorre, would you state whether or not you have been connected with the union since its inception?

(Testimony of Patrick Comorre.)

A. Well, not immediately when it was started but——

Q. When did you first become connected with it?

A. 1938, in July.

Q. When was the first time that you became an officer of the union?

A. Around July of 1938, I believe that is correct.

Q. What position did you hold at that time?

A. I was an organizer for the Newsboys Union.

Q. How long did you hold that position?

A. About a year.

Q. In other words, until about July, 1939?

A. September, 1939.

Q. September, 1939? [2032]

A. Yes, that is correct.

Q. Can you tell us whether or not between September, 1939, and June, 1940, you held any office in the union?

A. No. I was a member of the union but I didn't hold any office at that time.

Q. You didn't hold office? A. No.

Q. But in June, 1940, you became secretary of the Committee representing the Union in Labor Board cases?

A. In May, 1940. That is right.

Q. So aside from a period between September, 1939, to May of 1940, at all other times since July,

(Testimony of Patrick Comorre.)

1938, you have been an officer of the Union?

A. That is correct.

(Testimony of Patrick Comorre.)

Q. In your capacity as an officer of the Union during the period prior to June, 1940, with the exception of the period from September, 1839, to May of 1940, you were familiar with the functions and general operations of the organization, were you not?

A. Yes, I was.

Q. As a matter of fact, in the period between September, '39, and May of 1940 you were a member of the Union, were you not? A. Yes, I was.

Q. Did you attend meetings? [2033]

A. Yes.

Q. Did you attend meetings regularly or not?

A. Well, with the exception of a couple of months, regularly.

Q. You were present throughout that entire hearing, were you not? A. I was.

Q. As a matter of fact, you testified as to the functioning of the Union in that entire hearing, did you not? A. That is correct.

Q. Will you state whether or not there has been any change in its functioning, in its general operation, since the prior hearing?

A. No major change, maybe a few minor, new officers, or stuff like that from time to time. They elect new officers every year. The officers would vary a little in some cases.

Q. Since that prior hearing, the Union has been holding regular meetings, has it not?

A. That is right.

Q. And it is collecting dues regularly from its membership? A. That is correct.

(Testimony of Patrick Comorre.)

Q. Can you state whether or not the Union has been attempting to act as bargaining representative for its members. A. We have.

Q. With the various publishers, the local publishers? A. Yes, we have. [2034]

Q. Mr. Comorre, can you state whether or not your organization at the present time is affiliated with any national labor organization?

A. Yes. We are affiliated with the national C. I. O.

Q. How long has your organization been affiliated with the C. I. O.?

A. Well, we have been affiliated with the C. I. O. since May, 1937.

Q. May, 1937? A. That is right.

Q. At that time it was the Committee for Industrial Organization?

A. That is correct. It was still C. I. O., but the Committee for Industrial Organization.

Q. Subsequently, when it became the Congress of Industrial Organizations, your organization remained affiliated? A. That is right.

Q. And it is so affiliated today?

A. That is correct.

Q. Since the prior hearing, can you state whether or not your organization has attempted to adjust grievances of the members with the local publishers? And I might state I refer specifically to the respondents in this case.

A. Did you say "prior"?

(Testimony of Patrick Comorre.)

Q. No, I say "subsequent" to the prior hearing. In other [2035] words, subsequent to June, 1940, has your organization, or has it not attempted to adjust grievances of its members with the respondents in this case? A. We have, yes.

Mr. Binford: Isn't that covered by stipulation, Mr. Cobey?

Mr. Cobey: I think the details are, yes.

That is all. [2036]

Mr. Cobey: Mr. Examiner, I would like to request leave for the Board to reopen this case for this limited purpose: I call your attention to the fact that in Board's Exhibit 4, which relates to The Examiner, the last sentence in paragraph 3 reads, "accordingly there has been no bargaining between respondent and the union." Inadvertently, such a sentence was omitted from Board's Exhibit 5, which is a stipulation which relates to The News, and I was wondering whether counsel for the News would be willing to make such a statement on the record.

Mr. Binford: Will you refer, Mr. Cobey, to the exact point in the stipulation in which you would like to have it amended. [2038]

Mr. Cobey That sentence would appear at the conclusion of paragraph 3, of Board's Exhibit 5.

Mr. Binford; The clause that you wish to have included in this stipulation would immediately follow the last word "certification," at the end of paragraph 3, of Board's Exhibit 5?

Mr. Cobey: Yes, and would read, "accordingly, there has been no bargaining between respondent and the union."

Mr. Binford: That is agreeable. [2039]

Mr. Hall: Will it be stipulated by the Board, and the representative of the Union present, that at no time have persons representing the Los Angeles Examiner dealt with this union, as a representative of respondent's employees, and by "union" I am, of course, referring to Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

Mr. Cobey: The Board will so stipulate?

Mr. Comorre: Yes.

Mr. Binford: May the same stipulation be entered into on behalf of the Stockholders Publishing Company, Inc., publishers of The Daily News?

Mr. Cobey: That is agreeable to the Board.

Mr. Commore: That is agreeable to the Union.

Trial Examiner Wilson: Off the record.

(There was a discussion off the record.)

Trial Examiner Wilson: All right, on the record. Proceed.

Mr. Hall: I would like to be marked, as Los Angeles Examiner's Exhibit No. 1, for identification, two copies of findings and award of the Industrial Accident Commission of the State of California in the proceeding entitled "Abe Goren [2040] versus Hearst Publications, Inc., et al.," being No. L. A. 53-671. These copies that I now ask to have marked being both certified by the Industrial Accident Commission of California.

Trial Examiner Wilson: Any objection?

Mr. Hall: And I hand them to counsel for the Board and representative of the Union.

(Thereupon, the document referred to was marked as Los Angeles Examiner's Exhibit No. 1, for identification.

Trial Examiner Wilson: Any objection?

Mr. Cobey: Mr. Examiner——

Mr. Hall: Pardon me. To make the record clear I now offer in evidence the document, which I understand has just been marked Los Angeles Examiner's Exhibit No. 1.

Mr. Cobey: Mr. Examiner, I would like to object to the admission of Examiner's Exhibit No. 1 in evidence on the ground that it is irrelevant and immaterial to the issues of this proceeding. You understand I make no objection on the score of authenticity; it is simply on the ground of relevancy that a determining made in the Industrial Accident Commission that a news vendor is not an employee within the meaning of the compensation laws of the State of California has no bearing upon the issue as to whether or not these same news vendors are employees within the meaning of the [2041] National Labor Relations Act.

I would also like to state that from an inspection of the proffered exhibit, it does not disclose the fact that the plaintiff in the case was engaged in the distribution of The Examiner, since the case is merely brought against the Hearst Publications, and I do not know whether this particular indi-

vidual was engaged in the distribution of the Herald or of the Examiner.

Trial Examiner Wilson: What do you claim for this, Mr. Hall?

Mr. Hall: I might suggest this, Mr. Examiner, that responsive to the last part of the objection of counsel for the Board, I would ask to have another document marked in this connection and then possibly that will obviate his objection.

I now ask to have marked for identification as Los Angeles Examiner's Exhibit No. 2, in duplicate, transcripts of the testimony in the proceeding before the Industrial Accident Commission of the State of California to which I referred in connection with Los Angeles Exhibit No. 1, namely, in connection with Case No. L. A. 53-671, one entitled "Abe Goren versus Hearst Publications, Inc., et al.," both copies of this transcript, which I now offer, to be marked in this manner, have been certified by the Industrial Accident Commission of California. And I now exhibit that to counsel [2042] for the Board and to the representatives of the Union.

(Thereupon, the document referred to was marked as Los Angeles Examiner's Exhibit No. 2, for identification.)

Mr. Cobey: Mr. Examiner——

Mr. Hall: And I also ask that upon their being examined that they be offered in evidence under the numbers given.

Mr. Cobey: Mr. Examiner, I make the same

objection, as previously stated, to Examiner's Exhibit 2 for identification, and I would like to point out that this decision and award, and the testimony taken, could have no bearing upon the issues of this case because it is merely a matter of local and state law, while in the instant case we are dealing with a piece of federal legislation; and the purpose of Congress in making such legislation was to insure uniform interpretation, and if the interpretation is to be controlled in whole, or in part, by interpretations of the various state courts, or state tribunals, that uniform interpretation could not be realized. So I make my same objection to the admission of Los Angeles Examiner's Exhibit 2, for identification, as I previously stated to the admission of Examiner's Exhibit 1.

Trial Examiner Wilson: You are willing to admit the authenticity of all the papers?

Mr. Cobey: Yes, that is right. They are what they purport to be. [2043]

Trial Examiner Wilson: All right.

At this time the Examiner will sustain the objection and suggests to Mr. Hall that in the event the Examiner is wrong in his ruling that Examiner's Exhibits 1 and 2 be placed in the file, called the rejected exhibit file, so that if the Examiner is wrong the Board can reverse me on this and admit the documents in evidence. [2044]

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10112

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10114

STOCKHOLDERS PUBLISHING COMPANY, INC.

Petitioner;

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10115

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10123

THE TIMES-MIRROR COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in proceedings had before said Board entitled, "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O." and "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.," and "In the Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.," and "In the Matter of Stockholders Publishing Company, Inc., and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., the same being, respectively, Cases Nos. C-2023, C-2024, C-2050, and C-2051 before said

Board, such transcript including the pleadings, testimony and evidence upon which the orders of the Board in said proceedings were entered, and including also the findings and orders of the Board.

Fully enumerated, said documents attached hereto are as follows:

Cases Nos. R-1923 (XXI-R-927), R-1924 (XXI-R-928), R-1925 (XXI-R-1062), R-1926 (XXI-R-1084)

(1) Stenographic transcript of testimony before Thomas H. Kennedy, Trial Examiner for the National Labor Relations Board on June 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26 and 27, 1940, together with all exhibits introduced in evidence.

(2) Copy of respondent Stockholders' (R-1923) request for permission to file brief, dated June 27, 1940.

(3) Copy of respondent Times' (R-1925) request for permission to file brief, dated June 27, 1940.

(4) Copy of respondent Hearst's (R-1926) request for permission to file brief, dated June 27, 1940.

(5) Copy of respondent Hearst's (R-1924) request for permission to file brief, dated June 28, 1940.

(6) Copy of letter, dated June 29, 1940, granting all parties permission to file brief.

(7) Copy of stipulation, dated October 1, 1940,

providing for correction of transcript of testimony.

(8) Copy of order, dated October 4, 1940, making above stipulation a part of the record.

(9) Copy of decision, findings of fact, conclusions of law and direction of elections, issued by the National Labor Relations Board January 9, 1941, together with affidavit of service thereof.

(10) Copy of amendment to decision and direction of elections issued by the National Labor Relations Board January 18, 1941, together with affidavit of service thereof.

(11) Copy of second amendment to direction of elections issued by the National Labor Relations Board January 31, 1941, together with affidavit of service thereof.

(12) Copy of respondent Stockholders' (R-1923) motion to reopen proceedings (and for modification of decision), dated March 13, 1941.

(13) Copy of respondent Hearst's (R-1924) motion to reopen decision and direction of elections and for modification thereof, dated March 13, 1941.

(14) Copy of order, dated March 21, 1941, denying motion of respondent Stockholders (R. 1923).

(15) Copy of third amendment to direction of elections issued by National Lab Relations Board, March 29, 1941, together with affidavit of service thereof.

(16) Copy of stipulation, dated March 29, 1941, providing for further amendment to the Board's decision and direction of elections.

(17) Copy of fourth amendment to decision

and direction of elections issued by the National Labor Relations Board, April 12, 1941, pursuant to stipulation of parties, together with affidavit of service thereof.

(18) Copy of fifth amendment to direction of elections issued by the National Labor Relations Board, May 9, 1941, together with affidavit of service thereof.

(19) Copy of respondent Stockholders' (R-1923) letter, dated May 12, 1941, challenging scheduled election of its employees.

(20) Copy of respondent Times' (R-1925) objections to validity of direction of elections and exceptions to the same, dated May 9, 1941.

(21) Copy of respondent Hearst's (R-1926) objections to validity of direction of elections and exceptions to the same, dated May 13, 1941.

(22) Copy of respondent Hearst's (R-1924) challenges of scheduled election of its employees, May 14, 1941.

(23) Copy of Regional Director's election report (R-1923), dated May 17, 1941.

(24) Copy of Regional Director's election report (R-1924), dated May 17, 1941.

(25) Copy of order dated May 21, 1941, overruling respondent Times' (R-1925) objections to validity of direction of elections and exceptions to the same.

(26) Copy of respondent Stockholders' (R-1923) objections to election report and the conduct of same, dated May 23, 1941.

(27) Copy of respondent Hearst's (R-1924) objections, dated May 23, 1941, to conduct of the ballot and to the election report.

(28) Copy of order, dated May 26, 1941, overruling respondent Hearst's (R-1926) objections to validity of direction of elections and exceptions to same.

(29) Copy of Regional Director's report, dated May 26, 1941, on objections of respondent Stockholders (R-1923) to the election report.

(30) Copy of Regional Director's report, dated May 26, 1941, on objections of respondent Hearst (R-1924) to the election report.

(31) Copy of Regional Director's election report (R-1925), dated June 2, 1941.

(32) Copy of respondent Times' R-1925 objections to the conduct of the ballot and to the election report, sworn to June 6, 1941.

(33) Copy of Regional Director's report, dated June 12, 1941, on objections of respondent Times (R-1925) to the election report.

(34) Copy of supplemental decision and certification of representatives issued by the National Labor Relations Board, July 30, 1941, together with affidavit of service thereof.

(35) Copy of Regional Director's election report (R-1926), dated August 29, 1941.

(36) Copy of respondent Hearst's (R-1926) objections, dated September 5, 1941, to the conduct of the ballot and to the election report.

(37) Copy of Regional Director's report dated

September 8, 1941, on objections of respondent Hearst (R-1926) to the election report.

(38) Copy of supplemental decision and direction (R-1926) issued by the National Labor Relations Board, September 26, 1941, together with affidavit of service thereof.

(39) Copy of Regional Director's supplemental election report (R-1926), dated October 3, 1941, issued pursuant to Board's supplemental decision and direction of September 26, 1941.

(40) Copy of letter dated October 9, 1941, advising of no objections filed to supplemental election report.

(41) Copy of certification of representatives (R-1926) issued by the National Labor Relations Board October 20, 1941, together with affidavit of service thereof.

Cases No. C-2023 (XXI-C-1840)
and C-2024 (XXI-C-1843)

(42) Charge filed by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to August 28, 1941, in case XXI-C-1840 (C-2023).

(43) Charge filed by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to September 3, 1941, in case XXI-C-1843 (C-2024).

(44) Certified copy of order consolidating cases Nos. XXI-C-1840 (C-2023) and XXI-C-1843 (C-2024), dated October 23, 1941.

(45) Complaint and notice of hearing issued by the National Labor Relations Board October 25, 1941, in case XXI-C-1840 (C-2023).

(46) Complaint and notice of hearing issued by the National Labor Relations Board October 25, 1941, in case XXI-C-1843 (C-2024).

(47) Respondent Times' answer to complaint, sworn to November 3, 1941, case XXI-C-1843 (C-2024).

(48) Respondent Times' motion to dismiss, dated November 4, 1941, case XXI-C-1843 (C-2024).

(49) Certified copy of order designating W. P. Webb, Trial Examiner (Cases XXI-C-1840 (C-2023) and XXI-C-1843) (C-2024) dated November 6, 1941.

(50) Respondent Hearst's motion to dismiss, dated November 7, 1941, case XXI-C-1840 (C-2023).

(51) Respondent Hearst's answer to complaint, sworn to November 7, 1941, case XXI-C-1840 (C-2023).

Documents listed hereinabove, under items 42 to 51, inclusive, are contained in the exhibits and included under the following item:

(52) Stenographic transcript of testimony before W. P. Webb, Trial Examiner for the National Labor Relations Board on November 10 and 12, 1941, together with all exhibits introduced in evidence.

(53) Copy of stipulation, dated November 21, 1941, providing for correction of the stenographic transcript of record.

(54) Copy of order directing correction of stenographic transcript of record issued by Trial Examiner Webb, November 21, 1941.

(55) Copy of Intermediate Report of Trial Examiner Webb, dated December 4, 1941.

(56) Copy of order transferring case to the National Labor Relations Board, dated December 6, 1941, together with annexed notice.

(57) Copy of respondent Times' (C-2024) request for permission to present oral argument, dated December 13, 1941.

(58) Copy of respondent Hearst's (C-2023) request for permission to present oral argument, dated December 20, 1941.

(59) Copy of notice of hearing for purpose of oral argument dated December 26, 1941.

(60) Copy of respondent Times' (C-2024) exceptions to the Intermediate Report, dated December 31, 1942.

(61) Copy of respondent Hearst's (C-2023) exceptions to the Intermediate Report, dated January 2, 1942.

(62) Copy of list of appearances at oral argument held before the Board, January 22, 1942.

(63) Copy of decision, findings of fact, conclusions of law and orders, issued by the National Labor Relations Board, March 30, 1942, together with affidavit of service and United States Post Office return receipts thereof.

Cases Nos. C-2050 (XXI-C-1956)
and C-2051 (XXI-C-1957)

(64) Charge filed by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to

November 21, 1941, in case XXI-C-1956 (C-2050).

(65) Charge filed by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to November 21, 1941, in case XXI-C-1957 (C-2051).

(66) Complaint and notice of hearing issued by the National Labor Relations Board, December 5, 1941, case XXI-C-1956 (C-2050).

(67) Complaint and notice of hearing issued by the National Labor Relations Board, December 5, 1941, case XXI-C-1957 (C-2051).

(68) Certified copy of order consolidating cases Nos. XXI-C-1956 (C-2050) and XXI-C-1957 (C-2051), dated December 3, 1941.

(69) Certified copy of order designating Thomas S. Wilson, Trial Examiner, dated December 10, 1941.

(70) Respondent Stockholders' motion to dismiss complaint, dated December 11, 1941, case XXI-C-1957 (C-2051).

(71) Respondent Stockholders' answer to complaint, sworn to December 11, 1941, case XXI-C-1957 (C-2051).

(72) Respondent Hearst's motion to dismiss complaint, dated December 12, 1941, case XXI-C-1956 (C-2050).

(73) Respondent Hearst's answer to complaint, sworn to December 12, 1941, case XXI-C-1956 (C-2050).

(74) Order postponing hearing, dated December 15, 1941.

Documents listed hereinabove, under items 64

to 74, inclusive, are contained in the exhibits and included under the following item:

(75) Stenographic transcript of testimony before Thomas S. Wilson, Trial Examiner for the National Labor Relations Board on December 16, 1941, together with all exhibits introduced in evidence.

(76) Copy of Trial Examiner Wilson's Intermediate Report, dated January 7, 1942.

(77) Copy of order transferring case to National Labor Relations Board, dated January 10, 1942, together with annexed notice.

(78) Copy of respondent Stockholders' (C-2051) request for permission to present oral argument, dated January 20, 1942.

(79) Copy of respondent Hearst's (C-2050) request for permission to present oral argument, dated January 22, 1942.

(80) Copy of notice of hearing for purpose of oral argument, dated January 27, 1942.

(81) Copy of respondent Hearst's (C-2050) exceptions to the Intermediate Report, dated January 28, 1942.

(82) Copy of respondent Stockholders' (C-2051) exceptions to the Intermediate Report, dated February 4, 1942.

(83) Copy of list of appearances at oral argument held before the Board on February 19, 1942.

(84) Copy of decision, findings of fact, conclusions of law and orders issued by the National Labor Relations Board March 30, 1942, together with

affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 5th day of June 1942.

[Seal] BEATRICE M. STERN
Executive Secretary
NATIONAL LABOR
RELATIONS BOARD

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. No. 10112. Hearst Publications, Incorporated, Petitioner, vs. National Labor Relations Board, Respondent. No. 10114. Stockholders Publishing Company, Inc., Petitioner, vs. National Labor Relations Board, Respondent. No. 10115. Hearst Publications, Incorporated, Petitioner, vs. National Labor Relations Board, Respondent. No. 10123. The Times-Mirror Company, a corporation, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board.

Filed June 10, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10112

HEARST PUBLICATIONS, INCORPORATED,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Comes now Hearst Publications, Incorporated, a California corporation, a party aggrieved by a final order of the National Labor Relations Board, and files this its petition, pursuant to the provisions of section 10(f) of the Act of Congress of July 5, 1935 (49 Stat. 449), known and cited as the National Labor Relations Act, for the review of the decision and final order of the National Labor Relations Board, dated March 30, 1942, directing that petitioner cease and desist from certain practices, denominated by said Board as "unfair labor practices." The proceeding resulting in said order is entitled upon the Board's records "In the Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys

Local Industrial Union No. 75, C.I.O., Case No. C-2050," and this case before the Board was consolidated with Case No. C-2051. In support of this petition, this petitioner respectfully shows:

1. Petitioner is and at all times herein referred to was a California corporation engaged in business in the State of California, within this judicial circuit. Petitioner maintains and at all of said times has maintained an office and places of business within the State of California. Petitioner has continuously for many years maintained and operated as a separate and distinct enterprise and department of its business a newspaper printing and publishing plant at Los Agenles, California, known as "Los Angeles Examiner Department," at which plant it prints a daily and Sunday newspaper, known as "Los Angeles Examiner," and sometimes in the proceedings before the Board referred to as the "Examiner." A part of each issue of such newspaper is sold to newsboys who in turn resell the same to retail purchasers on the streets of the City of Los Angeles. Petitioner in connection with its said Los Angeles Examiner Department has an investment in plant and equipment and in press franchises, circulation and good will of a value amounting to many hundreds of thousands of dollars.

2. Respondent, National Labor Relations Board, herein referred to as the "Board," is an agency of the government of the United States of America, created pursuant to the Act of Congress of July 5, 1935 (49 Stat. 449), known and cited as the National

Labor Relations Act. The duly appointed, qualified and acting members of said Board are now Messrs. Harry A. Millis, Wm. M. Leiserson and Gerard D. Reilly. Said Board at all times herein referred to had an office and a Regional Director for the Twenty-first Region at Los Angeles, California, within this judicial circuit and within the jurisdiction of this Court. As will hereinafter more fully appear, all of the so-called unfair labor practices in which in this proceeding it is alleged that petitioner engaged occurred at Los Angeles, California, within this judicial circuit and within the jurisdiction of this Court. This Court has jurisdiction of this petition by virtue of section 10(f) of the National Labor Relations Act.

3. On or about May 18, 1940, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein referred to as the "Union," filed with the Board's Regional Director for the Twenty-first Region at Los Angeles, California, a petition for investigation and certification of representatives pursuant to section 9(c) of the National Labor Relations Act. By such petition the Union alleged that this petitioner was an employer engaged in newspaper publishing; that certain newsboys engaged in the street sale of petitioner's newspaper at established spots and corners within the City of Los Angeles, California, constituted an appropriate bargaining unit; that newsboys within such unit were employees of petitioner; that a majority of such employees had designated or selected the Union to be their representative for col-

lective bargaining; that a question had arisen concerning the representation of such employees in such bargaining unit; and that such question was one affecting commerce within the meaning of the National Labor Relations Act. By such petition the Union requested that the Board investigate such controversy and certify to the parties the name or names of the representatives that had been designated or selected by such newsboys. At the subsequent hearing, on or about June 22, 1940, the Union amended said petition with respect to the allegations therein concerning an appropriate unit and such amendment was granted by the National Labor Relations Board by its decision and direction of elections, dated January 9, 1941, hereinafter referred to. Such amendment described the unit alleged to be the appropriate bargaining unit as "all newsboys engaged in the street sale of the Los Angeles Examiner at established spots 4 or more hours per day, 5 or more days per week, within the City of Los Angeles, California, except temporary newsboys"; and "established spot" was defined by said amendment as "a place where a newsboy has engaged in the street sale of the Los Angeles Examiner 5 or more days a week for a period of 6 consecutive months or more," and a "temporary newsboy" was defined by said amendment as "a newsboy who has been engaged in the street sale of the Los Angeles Examiner at an established spot for 30 days or less." This proceeding before the Board was known as Case No. R-1926.*

*This case was first known as Case No. XXI-R-1084.

Orders of the Board entered March 27, 1940, and June 5, 1940, directed that said Case No. R-1926 be consolidated with three other cases known before said Board as Cases Nos. R-1923, R-1924 and R-1925, involving said Union and Stockholders Publishing Company, Inc., Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), and Times-Mirror Co., respectively.

4. On or about June 10, 1940, this petitioner duly served and filed its written answer to said petition for investigation and certification, denying that it was an employer of the persons claimed to be represented by the Union; denying that the alleged bargaining unit was the appropriate bargaining unit; denying that the alleged unit included any of petitioner's employees; denying that the Union had been designated or selected as a representative for purposes of collective bargaining by such alleged unit; denying that the Union represented a majority or any substantial fractional part of the newsboys engaged in the street sale of the Los Angeles Examiner within Los Angeles, California; and denying that any question concerning the representation of such newsboys was a question affecting commerce within the meaning of the National Labor Relations Act. At the same time petitioner duly served and filed its written motion to dismiss such petition for investigation and certification. Petitioner's said motion to dismiss was denied by the Board's decision and direction of elections, dated January 9, 1941, hereinafter referred to. A hearing was held at Los Angeles,

California, before the Board's Trial Examiner upon the petitions and answers in these consolidated cases. Such hearing commenced on or about June 10, 1940, and continued to on or about June 27, 1940. At such hearing the Trial Examiner granted petitioner's application to have its answer and motion to dismiss stand to the petition as the latter was amended at said hearing in the respects stated in paragraph 3 hereof.

5. By its decision and direction of elections in said consolidated cases, dated January 9, 1941, the Board directed that elections be conducted among newsboys engaged in the street sale of the newspapers published by the companies involved. It was thereby directed that an election be held among all newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, to determine whether such newsboys desired to be represented by the Union for purposes of collective bargaining. This decision and direction of elections was subsequently amended, but no such amendment altered this description of the group of newsboys engaged in the street sale of petitioner's newspaper within which such election was to be conducted.

6. Thereafter and prior to any election it was agreed between a representative of the Board and this petitioner that the participation of this petitioner in any discussion relative to the conduct of such election should not be deemed acquiescence by

this petitioner in the correctness of the ruling of the Board on January 9, 1941, directing the holding of such election, nor be deemed a waiver of petitioner's contention that the Board had no jurisdiction over it with respect to the subject-matter of such controversy. Also, prior to any election, and on or about May 13, 1941, petitioner duly served and filed its written "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)." By order of the Board, dated May 26, 1941, these objections were overruled. On or about May 15, 1941, an election was conducted under the direction and supervision of the Board's Regional Director for the Twenty-first Region among newsboys engaged in the street sale of petitioner's newspaper within said group, and such Regional Director thereafter made and filed his report with reference to such election. On or about September 5, 1941, petitioner duly served and filed its written "Objections to the Conduct of the Ballot and to the Election Report." These objections were overruled by the Board in its Supplemental Decision and Direction, dated September 26, 1941.

7. The Board, by its certification of representatives, dated October 20, 1941, certified that as a result of said election the Union had been designated and selected by a majority "of all employees" of this petitioner "who are newsboys engaged in the street sale of the Examiner at established spots 4 or more

hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining" and that the Union was the exclusive representative "of all such employees" for the purposes of collective bargaining. The proceedings before the Board referred to in this and preceding paragraphs will be herein referred to as the "representation proceedings."

8. On or about December 5, 1941, the Board issued its complaint against petitioner, alleging, among other things, that the Union was a labor organization within the meaning of the National Labor Relations Act; that a unit for the purposes of collective bargaining composed of newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, would be composed of employees of petitioner and would insure to such employees the full benefit of their right to self-organization and collective bargaining, and that such unit was appropriate for the purposes of collective bargaining; that by May 15, 1941, or before that date, a majority of the employees of this petitioner within such unit had designated the Union as their representative for the purposes of bargaining collectively with petitioner and that this majority status of the Union within such unit had continued up to and including the date of such complaint; that petitioner had continuously failed and refused to bar-

gain collectively in good faith with the Union; that by such failure and refusal petitioner had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act; that the acts of petitioner in connection with the operation of its business had a close, intimate and substantial relation to trade, traffic and commerce among the several states and tended to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce; and that the acts of petitioner constituted unfair labor practices affecting commerce and the free flow of commerce within the meaning of section 8, subsections (1) and (5) and section 2, subsections (6) and (7) of the National Labor Relations Act. This proceeding before the Board was known as Case No. C-2050,* and by order of the Board, dated December 3, 1941, was consolidated with Case No. C-2051 involving the Union and Stockholders Publishing Company, Inc.

9. On or about December 15, 1941, this petitioner duly served and filed its written answer to said complaint wherein, among other matters, it denied the allegations of said complaint hereinbefore referred to, except that it admitted that it had refused to bargain collectively with the Union and alleged that such refusal was in good faith and upon the advice of competent counsel and in the bona fide belief that the Board had no jurisdiction over petitioner

*This case was first known as case No. XXI-C-1956.

with respect to petitioner's relationship with the newsboys referred to in the complaint, who were independent contractors and not employees. By such answer petitioner also affirmatively alleged that the Board had no jurisdiction over petitioner; that petitioner was not engaged in interstate or foreign commerce; that no member of the Union was an employee of petitioner; that the persons within the alleged bargaining unit were not petitioner's employees; that the newsboys referred to in the complaint were engaged solely in intrastate commerce and were not engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries; that no refusal of petitioner to bargain with the Union could burden or obstruct commerce or lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; that no cessation of the news-vending activities of the members of the Union or the newsboys referred to in the complaint would burden or obstruct commerce or the free flow of commerce, or lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; that all of the newsboys referred to in the complaint were independent contractors over whose relations with petitioner the Board had no jurisdiction; and that the Industrial Accident Commission of the State of California, in a decision rendered on August

26, 1941, had ruled that a newsboy engaged in the street sale of petitioner's newspaper at an established spot 4 or more hours a day, 5 or more days a week, within Los Angeles, California, was not an employee of petitioner but was, on the contrary, an independent contractor.

10. On or about December 15, 1941, this petitioner duly served and filed its written motion to dismiss said complaint, urging therein as grounds therefor the matters to which reference is made in paragraph 9 herein. At the subsequent hearing upon said complaint such motion was denied by the Board's Trial Examiner.

11. On December 16, 1941, a hearing was held at Los Angeles, California, before the Board's Trial Examiner upon said complaint and answer, as well as upon the complaint and answer in said Case No. C-2051. At such hearing a written stipulation was made by representatives of this petitioner, the Union and the Board, and offered in evidence by the Board's attorney and received in evidence, by which it was agreed that there had been no material change in the conduct of the business of petitioner since the hearing in the representation proceedings in June, 1940, and that, if all witnesses called by the Union, the Board and petitioner at such representation hearing were called to testify in this complaint proceeding, their testimony would be substantially the same as their testimony given at such hearing in the representation proceedings, provided that this should not be

deemed to constitute an admission by petitioner that such testimony was sufficient to support a finding of fact or conclusion of law that the members of the Union or any of them were employees of petitioner, or constitute a waiver by petitioner of its right to contend that the evidence taken at the hearing in the representation proceedings was insufficient to show that any of the members of the Union or any of the persons within the unit which had been held by the Board to be appropriate was an employee of petitioner, or a waiver of petitioner's right to contend on all or any of the grounds urged before, at, or after said hearing in the representation proceedings, or on all or any of the grounds urged in petitioner's motion to dismiss the complaint in said Case No. C-2050, that the Board had no jurisdiction over petitioner, and that petitioner by entering into such stipulation did not admit, consent or agree that any of the members of the Union was an employee of petitioner within the purview of the National Labor Relations Act, and did not thereby or at all consent to or subject itself to the jurisdiction of the Board, and did not waive any of the grounds of objection theretofore asserted and maintained in the representation proceedings and by its answer and motion to dismiss in said Case No. C-2050.

12. Thereafter such Trial Examiner issued his intermediate report, dated January 7, 1942, finding that this petitioner had engaged in and was engaging in unfair labor practices affecting com-

merce within the meaning of section 8, subsections (1) and (5), and section 2, subsections (6) and (7) of the National Labor Relations Act, and recommending that this petitioner cease and desist from such unfair labor practices, and upon request, bargain collectively with the Union. On February 2, 1942, this petitioner duly served and filed with the Board written exceptions to such intermediate report and a brief in support of such exceptions. On February 19, 1942, a hearing for the purpose of oral argument was held before the Board at Washington, D. C.

13. Thereafter the Board issued its decision and order, dated March 30, 1942. This order is now a final order of the Board. This order, upon the basis of certain findings of fact and conclusions of law, directs that petitioner shall cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing,

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in section 7 of the Act;

and that petitioner shall take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Upon request bargain collectively with the Union as the exclusive representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that petitioner will not engage in the conduct from which it is ordered to cease and desist, and (2) that petitioner will take the affirmative action set forth in the next preceding paragraph;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps petitioner has taken to comply therewith.

On April 9, 1942, petitioner notified the Board's Regional Director for the Twenty-first Region in

writing that it had taken no steps to comply with such order, desiring that underlying questions in this controversy be finally determined, and that for the purpose of insuring speedy determination of such questions it would file a petition for review of said order, pointing out that such questions and petitioner's reasons for non-compliance with the Board's order had already been stated in various pleadings and particularly in petitioner's exceptions to said intermediate report. The proceedings before the Board referred to in this paragraph and in paragraphs 8 to 12, inclusive, will be herein referred to as the "complaint proceedings."

14. The order of the Board dated March 30, 1942, and the purported findings of fact and conclusions of law upon which such order is based, and each and every order and proceeding taken or made by the Board as a basis or predicate for said order, are, and each of the same is erroneous, invalid, void, contrary to law and prejudicial to this petitioner, and in this connection petitioner alleges and specifies the following errors by which petitioner is aggrieved.

15. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act.

16. There is no substantial evidence to support the Board's finding (Findings of Fact II) that the Union admitted or admits to membership employees of petitioner.

17. There is no substantial evidence to support the Board's findings (Findings of Fact III, A, 2; III, A, 3) that the Union was the duly designated bargaining representative of a majority of petitioner's employees in the unit referred to in said order, and that the Union was and is the exclusive representative for the purposes of collective bargaining of all employees of petitioner in such unit.

18. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that this petitioner on November 14, 1941, and at all times thereafter interfered with, restrained and coerced its employees in the exercise of rights guaranteed under the National Labor Relations Act.

19. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 1) that all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, constituted or constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to employees of petitioner the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the National Labor Relations Act.

20. The Board has failed to find or declare by finding of fact or conclusion of law or otherwise the meaning of the term "established spots," as that term is used in its findings of fact, conclusions of law and order of March 30, 1942.

21. The Board has failed to find or declare by finding of fact or conclusion of law or otherwise the meaning of the term "temporary newsboys," as that term is used in its findings of fact, conclusions of law and order of March 30, 1942.

22. While the Board's certification of the result of said election recites that there were 453 newsboys eligible to vote at said election conducted on May 15, 1941, and only a total of 161 votes were cast at said election for the Union as bargaining representative of said group, said order of March 30, 1942, is based upon a finding of fact (Findings of Fact III, A, 2) that the Union was the duly designated bargaining representative of a majority of said group, and a conclusion of law (Conclusions of Law 4) that the Union has been at all times and still is the exclusive representative of such group for the purposes of collective bargaining. Objection on this ground was made to the Board by petitioner by its said objections to the conduct of the ballot and to the election report.

23. The Board's Trial Examiner, at the hearing on December 16, 1941, erroneously excluded evidence tending to establish a fact contrary to the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding are employees within the meaning of the National Labor Relations Act, by rejecting an offer in evidence of a transcript of testimony and findings and award in a proceeding before the Industrial Accident Commission of the State of California, Claim No.

L. A. 53-671, the same being Los Angeles Examiner's Rejected Exhibits 1 and 2.

24. The Board made its finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act solely upon evidence introduced at the hearing in said representation proceedings (June 10, 1940, to June 27, 1940), and the Board's prior determination of such employee status in said representation proceedings in the Board's decision and direction of elections, dated January 9, 1941. From such decision and direction of elections it will appear that the Board, in determining that such newsboys were employees of this petitioner has considered and relied upon evidence received at such hearing in said representation proceedings which was and is wholly inapplicable to the newsboys engaged in the street sales of this petitioner's newspaper, inasmuch as such evidence related solely to the activities and status of newsboys engaged in street sales of other newspapers published by other parties, and inasmuch as it was stipulated and agreed by counsel for the Board and counsel for this petitioner at said hearing that such evidence relating to the newsboys for other newspapers was not introduced against this petitioner or for the purpose of binding this petitioner.

25. There is no substantial evidence to support the Board's finding (Findings of Fact IV) that the activities of petitioner occurring in connection with its operations referred to in the Board's find-

ings, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

26. The Board erred in its conclusion of law (1) that the Union is a labor organization within the meaning of the National Labor Relations Act.

27. The Board erred in its conclusion of law (2) that newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, except temporary newsboys, were employees of petitioner and constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

28. The Board erred in its conclusion of law (4) that the Union has been and still is the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

29. The Board erred in its conclusion of law (5) that by refusing to bargain collectively with the Union as such exclusive representative petitioner has engaged in or is engaging in unfair labor practices within the meaning of the National Labor Relations Act.

30. The Board erred in its conclusion of law (6) that petitioner has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in the National Labor Relations Act, and that petitioner has engaged in and is engaging in

unfair labor practices within the meaning of the National Labor Relations Act.

31. The Board erred in its conclusion of law (7) that such unfair labor practices are unfair labor practices affecting commerce within the meaning of the National Labor Relations Act.

32. The Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are petitioner's employees within the meaning of the National Labor Relations Act was and is contrary to the evidence that such newsboys purchased their merchandise at a wholesale price and for their remuneration depended upon profit from their retail sales, the volume of such profit being dependent upon their success in conducting such retail sales; that the methods used in attracting customers were determined by the newsboys themselves; that the question whether credit should be extended to customers was determined by each newsboy upon his own initiative; that the newsboys, on occasion, hired others to assist them and made a profit in so doing; that the right to sell competing publications at the same time was frequently exercised by such newsboys and that no allocation of time spent as between the competing publications could be made; that the right to co-operate with newsboys selling competing publications was exercised by the newsboys for their mutual benefit; that the newsboys were known to petitioner only as sales outlets and occupied no different position than that occupied by other retail sellers of petitioner's news-

paper, such as drug stores, cigar stands and news stands; as well as other evidence showing that such newsboys were independent contractors as distinguished from employees. Said finding is also in disregard of and contrary to decisions of the highest courts of California and other states (heretofore relied upon by petitioner in its business and operations) holding and declaring newsboys operating under the same or similar conditions to be independent contractors and not employees.

33. Petitioner has repeatedly and consistently contended that the newsboys involved in this proceeding were not and are not its employees within the meaning of the National Labor Relations Act, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's intermediate report in said complaint proceedings.

34. The Board's finding (Findings of Fact III, A, 1) that all newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, constituted and constitute a unit appropriate for the

purposes of collective bargaining, was and is contrary to evidence that this petitioner's newspaper was and is sold on the streets by many newsboys who do not come within this limited and arbitrary definition of appropriate unit. There was no evidence showing that such unit was designated for the purposes of joining in a single group all alleged employees having a mutual interest in the objects of collective bargaining, or that the newsboys within such unit had or have any community of interest distinguishable from newsboys who are not included therein, or that the newsboys within such unit perform a different type or character of work from that performed by newsboys excluded therefrom, or that they have different skill or qualifications from those of the newsboys who are excluded, or that their experience or training is different from the experience or training of the newsboys excluded, or that their duties and responsibilities are different from those of the newsboys excluded. There was no evidence that the organization or operation of petitioner's business leads to any differentiation between newsboys within the designated unit and newsboys excluded therefrom, or that the desigated unit was established on the basis of any craft unit or industrial unit or any unit with a history of collective bargaining, or that the operations or other acts of petitioner have ever recognized or provided a basis for a differentiation between newsboys included within the designated unit and newsboys excluded therefrom. There was

no evidence of any word or act by which newsboys excluded from such unit had indicated their desire to be excluded therefrom. Under the definition of "appropriate unit" adopted by the Board there will be a constant shifting between personnel included within the designated unit and excluded personnel, so that time-consuming investigation would be necessary to determine as of any particular date which newsboys are within such unit (and thus affected by a collective bargain), and by the time such investigation were completed the personnel of the designated unit would have so changed as to render the results of such investigation worthless.

35. Petitioner has repeatedly and consistently contended that the designated bargaining unit was not an appropriate unit, such contention having been made before the Board in petitioner's objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer, and its exceptions to the Trial Examiner's intermediate report, in said complaint proceedings.

36. The Board's finding (Findings of Fact, IV) that the activities of petitioner occurring in connection with its operations have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce was and is contrary to

evidence that the newsboys engaged in the street sales of petitioner's newspaper in Los Angeles (the only newsboys involved in this proceeding) had nothing to do with interstate sales of petitioner's newspaper and that their activities did not and could not have any relations to newspapers sent out of the state, and that a diminution or complete cessation of street sales in Los Angeles would not diminish the volume of interstate sales. A refusal of petitioner to bargain with the Union would not increase or diminish or burden in any manner or affect the volume of interstate sales of petitioner's newspaper, or the volume of raw material received by it from other states incident to the production of its newspaper, e.g., newsprint, mats, news service, and material pertaining to features and advertising.

37. Petitioner has repeatedly and consistently contended that such activities have not had and do not have any close or intimate or substantial relation to trade, traffic, and commerce among the several states, or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its

answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's intermediate report in said complaint proceedings.

38. There is no substantial evidence to support the Board's finding (III) in its decision and direction of elections, dated January 9, 1941, that the newsboys here involved are within the definition of employees as that term is used in the National Labor Relations Act, or its finding therein (IV) that questions have arisen concerning the representation of employees of petitioner, or its finding therein (V) that the questions concerning representation which have arisen have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, or its finding therein (VI) that all newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, constitute a unit appropriate for the purposes of collective bargaining, and the Board's conclusions of law in said decision and direction of elections, based upon said findings, are erroneous.

39. There is no substantial evidence to support the Board's finding in its certification of representatives, dated October 20, 1941, that an election was conducted on May 15, 1941, among employees of petitioner, and the Board's certification that the Union has been designated and selected as a repre-

sentative for the purposes of collective bargaining by a majority of all employees of petitioner within a certain group, and that newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, are employees of petitioner, and that the Union is the exclusive representative of all such employees for the purposes of collective bargaining, is erroneous.

40. The Board erred in denying the motion of petitioner in said representation proceedings to dismiss the petition for investigation and certification of representatives.

41. The Board erred in overruling (on May 26, 1941) petitioner's "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)."

42. The Board erred in overruling (on September 26, 1941) petitioner's "Objections to the Conduct of the Ballot and To The Election Report."

43. The Board erred in denying the motion of petitioner to dismiss the complaint in said complaint proceedings.

44. The Board erred in its finding and ruling that the exceptions filed by this petitioner on February 2, 1942, to the intermediate report of the Trial Examiner in said complaint proceedings are without merit insofar as the same are inconsistent with the

Board's findings of fact, conclusions of law, and order, dated March 30, 1942.

45. Said decision and direction of elections, dated January 9, 1941, exceeds the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprives this petitioner of its property without due process of law and thereby violates Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, section 13, of the Constitution of California.

46. Said certification of representatives, dated October 20, 1941, exceeds the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprives this petitioner of its property without due process of law and thereby violates Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, section 13, of the Constitution of California.

47. Said order of the Board, dated March 30, 1942, and each and every part thereof, and each and every order and proceeding taken or made by the Board as a basis or predicate therefor, or upon which said order of March 30, 1942, is or may be based, exceed the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprive this petitioner of its property without due process of law and thereby violate Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, section 13, of the Constitution of California.

Wherefore, petitioner respectfully petitions and prays:

1. That respondent be required, in conformity with law, to certify to this Honorable Court a transcript of the entire record in these proceedings, including all pleadings, testimony and evidence upon which said order of March 30, 1942, was entered, all papers filed with the Board by petitioner in these proceedings, and all findings, conclusions ond orders of the Board affecting this petitioner; and including also the Board's certification and the entire record of its investigation under section 9(c) of the National Labor Relations Act, herein referred to as the representation proceedings, together with all pleadings, testimony and evidence, and all papers filed with the Board in such representation proceedings, and all findings, conclusions and orders of the Board affecting petitioner therein; and

2 That the Board's findings, conclusions and order of March 30, 1942, as well as all proceedings and orders taken and made by or before the Board as a basis or predicate for said order of March 3I, 1942, be reviewed by this Honorable Court; that said order of March 30, 1942, be set aside, vacated and annulled insofar as it relates to this petitioner; and that the complaint against this petitioner be dismissed; and

3. That this Honorable Court exercise its jurisdiction over the parties and the subject-matter of this petition, and grant to petitioner such other and

further relief in the premises as the rights and equities of the cause may required.

[Seal] HEARST PUBLICATIONS,
INCORPORATED,
By A. LAURENCE MITCHELL,
Its Secretary.
By OSCAR LAWLER,
MAX FELIX,
JOHN M. HALL,
A. LAURENCE MITCHELL,
Its Attorneys.

(Duly verified.)

[Endorsed]: Filed Apr. 24, 1942.

[Title of Circuit Court of Appeals and Cause No. 10112.]

NOTICE OF FILING OF PETITION FOR REVIEW

To National Labor Relations Board,
Washington, D. C.

Please take notice that the undersigned, respondent in Board's Case No. 2050, on April 24, 1942 filed in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, its written Petition for Review praying that the National Labor Relations Board's final order of March 30, 1942 in said Case No. C-2050 be set aside. Copy

of such petition is served upon you herewith, and reference to the same is made for further particulars.

Dated, April 25, 1942.

HEARST PUBLICATIONS,
INCORPORATED,
By JOHN M. HALL,
Its Attorney.

[Endorsed]: Filed Apr. 28, 1942.

AFFIDAVIT OF SERVICE OF NOTICE OF FILING OF PETITION FOR REVIEW

United States of America
State of California
County of Los Angeles—ss.

James C. White, being first duly sworn, deposes and says that he is, and at all times herein referred to was, a citizen of the United States of America and over eighteen years of age; that on April 25, 1942 he caused the annexed Notice of Filing of Petition for Review to be served upon National Labor Relations Board by delivering on that day at the office of William R. Walsh, Esq., the Regional Director for said Board for the Twenty-first Region, being the Board's office in the United States Post Office and Court House at Los Angeles, California, a duplicate original of said Notice, together with a true copy of the Petition referred to therein, and by depositing for transmission by registered mail, in the United

States Post Office at Los Angeles, California, on that day, enclosed in a sealed envelope, addressed to National Labor Relations Board, Shoreham Building, Washington, D. C., with registered postage thereon fully prepaid, a duplicate original of said Notice and a true copy of said Petition.

JAMES C. WHITE.

Subscribed and sworn to before me this 27th day of April, 1942.

[Seal] JEAN F. CROWE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 28, 1945.

[Title of Circuit Court of Appeals and Cause—No. 10112.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U.S.C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and this request for enforcement of the Board's order.

1. Answering the allegations of paragraphs 1, 22, 32, 34, 36, of the petition for review, the Board prays reference to the certified record of the proceedings before the Board filed herein, for a full and exact statement of the findings of fact, conclusions of law and order of the Board. To the extent that said allegations relate to matters not in issue in the proceedings before the Board and not, therefore, covered by or dealt with in the findings of fact, conclusions of law, and order of the Board, dated March 30, 1942, the Board alleges that they are irrelevant and immaterial to the issues in this case and neither admits nor denies them; to the extent that the said allegations relate to matters in issue in the proceedings before the Board and conflict with said findings of fact, conclusions of law, and order, the Board denies them.

2. The Board admits the allegations of paragraph 2 of the petition for review.

3. Answering the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 33, 35, and 37, of said petition for review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

4. The Board denies each and every allegation of error contained in paragraphs 14, 15, 16, 17, 18,

19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of said petition for review. Further answering, the Board avers that its said order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2050, entitled "In the Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a California corporation with its principal office and place of business in San Francisco, California, within this judicial district. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Case No. C-2050 before the Board, including, without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument

thereon, as more fully shown by the entire record in Case No. C-2050 certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union

No. 75, C.I.O., as the exclusive representatives of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(e) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2050 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in

said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth above and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June 1942.

ERNEST A. GROSS,
Associate General Counsel,
National Labor Relations Board.

(Duly Verified.)

[Endorsed]: Filed Jun. 10, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10112.]

POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW

To:

The Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit;

Honorable Paul P. O'Brien, Clerk of the above entitled Court;

National Labor Relations Board:

Comes now petitioner herein, and in accordance with paragraph 6 of rule 19 of this Court files with the Clerk of this Court its concise statement of the points on which petitioner intends to rely on its petition for review herein:

1. There is no substantial evidence supporting the finding or conclusion of the Board that the newsboys engaged in street sales of Los Angeles Examiner and within the claimed bargaining unit were and are employees of petitioner.

2. There is no substantial evidence supporting the finding or conclusion of the Board that the claimed bargaining unit for so-called employees of Los Angeles Examiner was and is an appropriate unit.

3. There is no substantial evidence supporting the finding or conclusion of the Board that this peti-

tioner's activities and practices involved in this proceeding had and have a close, intimate and substantial relation to and tend to lead to labor disputes burdening and obstructing commerce, or that the same affect commerce within the meaning or purview of the Act.

4. The relationship of this petitioner with its alleged employees within the claimed bargaining unit is not subject to the jurisdiction of the Board.

Respectfully submitted,

HEARST PUBLICATIONS,
INCORPORATED,
By: OSCAR LAWLER,
MAX FELIX,
JOHN M. HALL,
A. LAURENCE MITCHELL,
By: JOHN M. HALL
Its Attorneys.

AFFIDAVIT OF SERVICE OF POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW

United States of America,
State of California,
County of Los Angeles—ss.

James C. White, being first duly sworn, deposes and says:

That he is and at all times herein referred to was a citizen of the United States of America and over

eighteen (18) years of age; that on July 10, 1942, he caused the annexed Points on Which Petitioner Will Rely on its Petition for Review to be served upon National Labor Relations Board by delivering on that day at the office of William R. Walsh, Esq., the Regional Director for said Board for the Twenty-first Region, being the Board's office in the United States Post Office and Court House at Los Angeles, a true copy of said Points on Which Petitioner Will Rely on its Petition for Review, and by depositing for transmission by registered mail in the United States Post Office at Los Angeles, California, on that day, enclosed in a sealed envelope addressed to National Labor Relations Board, Shoreman Building, Washington, D.C., with registered postage thereon fully prepaid, a true copy of said Points on Which Petitioner Will Rely on its Petition for Review.

JAMES C. WHITE

Subscribed and sworn to before me this 10th day of July, 1942.

[Seal] JEAN F. CROWE

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 28, 1945.

[Endorsed]: Filed Jul. 14, 1942.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10114

STOCKHOLDERS PUBLISHING COMPANY, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD NO. C-2051

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Stockholders Publishing Company, Inc., a corporation, publisher of Daily News, a daily (except Sunday) newspaper, being a party aggrieved by final order of National Labor Relations Board, respectfully petitions this Honorable Court for a review of said Final Order which was entered on March 30th, 1942 by National Labor Relations Board (hereinafter for brevity called the "Board"), in a proceeding instituted by the Board against petitioner, designated upon the records of the Board as

"In the Matter of Stockholders Publishing

Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O.",

being case No. C-2051, and in support of its Petition your petitioner respectfully shows:

I.

That this Court has jurisdiction of this Petition by reason of the provisions of Section 10-F of the Act of Congress of July 5th, 1935 (49 Stat. 449), known as the National Labor Relations Act, and hereinafter referred to as the "Act".

II.

At all times herein mentioned petitioner was and is now a corporation organized and existing under the laws of the State of Nevada; it maintains one of its principal places of business and its publishing plant in the City of Los Angeles, State of California.

III.

In the complaint issued by the Board in said Case No. C-2051, it was alleged that petitioner had engaged in certain unfair labor practices in that it had refused to bargain collectively, with designated representatives of petitioner's employees, and the Board by its order of March 30th, 1942, aforesaid, found that petitioner had so refused to bargain collectively with said representatives.

IV.

That on the 6th day of June, 1940, Los Angeles Newsboys Local Industrial Union No. 75 C.I.O., an

alleged labor union hereinafter referred to as "Newsboys Union" filed a Petition for Investigation and Certification of Representatives, pursuant to Section 9-C of the Act, and responsive thereto the Regional Director of the Board caused said matter to be set down for hearing on the 10th day of June, 1940. Said proceeding is designated upon the records of the Board as

> "In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O.",

being proceeding No. R-1923; said proceeding will be hereinafter referred to as the "Certification Case".

V.

That subsequent to the filing of said Certification Case, petitioner filed with said Regional Director its Motion to Dismiss said Petition for Investigation, and also an answer to said Petition.

That by said Motion petitioner advanced eight separate grounds therefor, which may be briefly stated as:

(1) That the Board had no jurisdiction over respondent (petitioner herein);

(2) That Respondent was not engaged in interstate commerce, and that therefore the Board had no jurisdiction;

(3) That no member of the Newsboys Union was an employee of petitioner;

(4) That the persons constituting the unit of the alleged Union were not employees of

petitioner but were independent contractors;

(5) That the persons engaged in the sale and distribution of newspapers and included within the unit aforesaid were engaged in intra-state business and not in inter-state business or in any business activity having a close, intimate, substantial or any relation to trade traffic or commerce among the several states or territories of the United States and foreign countries.

(6) That the cessation of news vending activities of the members of the alleged Union would not result in burdening or obstructing commerce or the free flow of commerce, nor tend to lead to a labor dispute burdening or obstructing commerce or the free flow thereof.

VI.

That said Motion to Dismiss was denied by the Board and said Certification Case thereafter came on for hearing at Los Angeles on June 10th. 1940, and terminated on June 27th, 1940.

VII.

On January 9th, 1941, the Board duly rendered its decision and direction of elections in said Certification Case, and determined and found thereby that the news venders aforesaid were employees of petitioner, and directed that an election be held for the purpose of determining representatives among "full time" newsboys, which term "full time" newsboys was defined by stipulation dated the 29th day of March, 1941, to mean

"a newsboy who sells to the general public 5, 6, 8, 9 and 10 star editions, or 6, 8, 9 and 10 star editions of the News 5 or more days a week, and means a newsboy who sells the 4 star edition and previous editions of the News for a minimum of 4 hours per day between the hours of 4 o'clock A.M. and 10 o'clock A.M. 5 or more days a week".

VIII.

That on or about the 12th day of May, 1941, Petitioner filed with the Regional Director of the Board a blanket challenge and objection to the votes of all newsboys which might be cast at the proposed election, basing its challenge and objections on the lack of jurisdiction of the Board, upon the claim that all newsboys coming within the alleged unit were in fact independent contractors and not employees of petitioner, and upon substantially the same grounds used by it in the making of its Motion to Dismiss previously referred to.

That thereafter, and on May 14th, 1941, an election was held as ordered by the aforesaid decision and direction of elections, and on the 17th day of May, 1941, the Board, acting through William R. Walsh, Acting Regional Director, issued its election report, overruling petitioner's objection and challenge above referred to, and making the following finding:

"The undersigned hereby makes his findings with respect to the result of said secret ballot:

Total on eligibility list,	349
Total ballots cast,	247
Total ballots challenged	36
Total blank ballots,	1
Total void ballots,	1
Total ballots not counted,	38
Total ballots counted,	209
Total votes for Los Angeles Newsboys Local Industrial Union #75 C.I.O.	191
Total votes against Los Angeles Newsboys Local Industrial Union #75 C.I.O.	18"

IX.

That thereafter and on or about the 23rd day of May, 1941, petitioner filed with the Regional Director of the Board aforesaid, its objections to election report and the conducting thereof and thereafter said Regional Director issued his report on said objections overruling each and all of such objections made by petitioner.

X.

That on July 30th, 1941, the Board duly rendered its supplemental decision and certification of representatives, wherein it sustained and affirmed the rulings of the Regional Director heretofore referred to, with respect to petitioner's challenge and objections to the conducting of the election and to the election report, and in that portion thereof termed "Certification of Representatives" the Board certified as follows:

"It is hereby certified that Los Angeles

Newsboys Local Industrial Union No. 75 C.I.O. has been designated and selected by a majority of all employees of Stockholders Publishing Company, Inc., Los Angeles, California, who are full time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part time newsboys, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment".

XI.

That on or about November 21st, 1941, said Newsboys Union filed a charge against petitioner pursuant to Section 10(b) of the Act, alleging that petitioner had engaged and was engaging in unfair labor practices, and that it refused to recognize and bargain with said Newsboys Union. Thereafter and on or about the 5th day of December, 1941, the Board by its Regional Director aforesaid issued a complaint against petitioner in a proceeding designated as

"In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O."

being case No. XXI-C-1957, and included in said complaint a notice of the hearing of said charge before a Trial Examiner, fixing the date thereof for the 15th day of December, 1941, which proceeding will be hereinafter referred to as the "Complaint Case".

XII.

That on or about the 11th day of December, 1941, petitioner filed a motion to dismiss said complaint, and on or about the same day filed its answer thereto. That the grounds for the motion to dismiss were substantially the same as those assigned in support of petitioner's motion to dismiss in the Certification Case. Said case came on for hearing at Los Angeles on or about the 16th day of December, 1941.

XIII.

That thereafter and on or about January 7th, 1942, the Trial Examiner, Thomas S. Wilson, made and filed his Intermediate Report; that on or about the 4th day of February, 1942, petitioner filed its Exceptions to the Intermediate Report and other parts of the record and proceedings, and accompanied the same by a Brief in support thereof.

That thereafter and on the 19th day of February, 1942, oral argument was had on said Exceptions to said Intermediate Report before the Board at Washington, D. C.

XIV.

On March 30th, 1942, the Board rendered its Decision and Order in said case. It is this Order which petitioner is seeking to have reviewed.

XV.

In the "Decision and Order" aforesaid, the Board, under the title of "Statement of the Case" considers jointly the case of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O., being case number C-2050, with the case of petitioner, but makes separate Findings of Fact, separate Conclusions of Law and separate Orders, and insofar as petitioner is concerned the Order reads as follows:

"Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Stockholders Publishing Company, Inc., and its officers, agents, successors, and assigns, shall,

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right

to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. To take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

XVI.

With respect to the decision of the Board in the Certification Case dated January 9, 1941, as supplemented by decision dated January 30, 1941, it is respectfully submitted the Board erred in the following respects:

(a) In denying petitioner's Motion to Dismiss Petition for Investigation;

(b) In the making of Finding II under the title of "The Organization Involved", which finding reads as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the Metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines and periodicals, except those who have the power to hire and discharge",

in that such finding is not supported by substantial evidence.

(c) In Finding (the latter portion of Finding III):

> "Accordingly we find that the newsboys involved in this proceeding are employees within the meaning of Section 2(3) of the Act",

in that such Finding is not supported by substantial evidence.

(d) In finding (a part of Finding IV) as follows:

"We find that questions have arisen concern-

ing the representation of the employees of the companies",

in that such Finding is not supported by substantial evidence.

(e) In making its Finding V, reading as follows:

"We find that the questions concerning representation which have arisen occurring in connection with the operations of the companies described in Section I above have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce",

in that such Finding is not supported by any substantial evidence.

(f) In the making of that part of Finding VI reading as follows:

"We find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys",

in that there is no substantial evidence to support such Finding.

(g) In the making of that part of Finding VII reading as follows:

"At the hearing lists prepared by the * * * News * * * were introduced in evidence purporting to show the following approximate current number of newsboys employed * * *

News.....110"

in that such finding is not supported by substantial evidence.

(h) In reaching its conclusions of law numbered 1 and 2(a), in that such conclusions of law are not supported by any substantial evidence.

(i) In denying, March 21st, 1941, petitioner's motion to re-open proceedings and for modification of Decision; in disallowing petitioner's blanket challenge of all votes, and overruling petitioner's objection filed on the 12th day of May, 1941, in case No. R-923.

(j) In certifying by its Supplemental Decision and Certification of Representatives,

"That Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. has been designated and selected by a majority of all employees of Stockholders Publishing Company, Inc., Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is the exclusive representative of all such em-

ployees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

XVII.

It is further respectfully submitted that in its Decision and Order of March 30th, 1942 in the "Complaint Case", the Board erred in the following respects:

(a) In affirming the rulings of the Trial Examiner denying petitioner's motion to dismiss the Complaint;

(b) In the making of Finding II reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents",

in that such finding is not supported by substantial evidence.

(c) In making that part of Finding A-II, reading as follows:

> "We find, as did the Trial Examiner, that on and at all times after July 30th, 1941, with respect to the News * * * the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units, and that pursuant to the provisions of Section 9(a) of the Act the Union was at all such times and is now the ex-

clusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining and with respect to rates of pay, wages, hours of employment and other conditions of employment",

in that such finding is not supported by substantial evidence.

(d) In finding as a part of Finding III as follows:

"We hold that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act",

in that such finding is not supported by substantial evidence.

(e) In finding, as a part of Finding III, as follows:

"We find, as did the Trial Examiner, that the respondent News on August 27th, 1941, and at all times thereafter, * * * has (each) refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act,"

in that such finding is not supported by substantial evidence.

(f) in the making of its Finding IV, reading as follows:

"The activities of (each of the respondents) set forth in Section III above, occurring in

connection with the operations of (each of the respondents) described in Section I above have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce",

in that the same is not supported by substantial evidence.

(g) In failing to make any finding with respect to petitioner's second, fourth and fifth specially pleaded defenses.

(h) In its conclusions of law numbered 1 to 7 inclusive, in that such conclusions are not supported by any substantial evidence.

Wherefore, petitioner prays:

1. That respondent National Labor Relations Board be required to certify and file with this Honorable Court a full, true and correct copy of the transcript of record and the proceedings in the Certification Case No. R-1923 herein referred to, and in the Complaint Case No. C-2051, being the proceeding wherein the order herein sought to be reviewed was made.

2. That the decision, findings, conclusions of law and order of said Board in said Complaint Case No. C-2051 be reviewed by this Court, and that said

order in said Complaint Case be set aside, vacated and annulled.

3. For all appropriate relief.

STOCKHOLDERS PUBLISHING COMPANY, INC.
Petitioner
By L. B. BINFORD
By HOWARD M. BINFORD
Its Attorneys

(Duly verified.)

[Endorsed]: Apr. 24, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Irene M. Aldrich, being first duly sworn, says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 1208 Hollingsworth Building in the City of Los Angeles, County of Los Angeles, State of California. That on the 27th day of April, 1942, affiant served a copy of the Petition

for Review of Stockholders Publishing Company, Inc., on file herein, including a copy of this Affidavit of Service, together with Notice of the filing of same, a true and correct copy of which Notice is attached hereto, on National Labor Relations Board, Washington, D. C., and on William R. Walsh, Director of the Twenty-first Region, by placing true copies thereof in envelopes properly postaged and addressed as follows:

"National Labor Relations Board,
Shoreham Building,
Washington, D. C."

"Mr. William R. Walsh,
Regional Director of the Twenty-first Region,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

and by then sealing said envelopes and depositing the same, registered mail, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California.

That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

IRENE M. ALDRICH

Subscribed and sworn to before me this 27th day of April, 1942.

[Seal] V. I. MacMAHON

Notary Public in and for said County and State.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

NOTICE OF FILING OF PETITION

To: National Labor Relations Board, Shoreham Building, Washington, D. C.:

Notice is hereby given that Stockholders Publishing Company, Inc., on the 24th day of April, 1942, filed in the United States Circuit Court of Appeals for the Ninth Circuit, a Petition for Review of the decision and order of the National Labor Relations Board dated March 30, 1942, issued in the above entitled matter, being proceeding No. C-2051, and that said proceeding is numbered 10114 in the Circuit Court of Appeals in said District.

Dated this 27th day of April, 1942.

STOCKHOLDERS PUBLISHING COMPANY, INC.
Petitioner
By L. B. BINFORD
By HOWARD M. BINFORD
Its Attorneys

[Endorsed]: Filed Apr. 28, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U.S.C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and this request for enforcement of the Board's order.

1. The Board admits the allegations contained in paragraphs I and II of said petition for review.

2. Answering the allegations contained in paragraphs III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, and XV, of said petition for review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

3. The Board denies each and every allegation of error contained in paragraph XVI, subdivisions (a) to (j), inclusive, and in paragraph XVII, sub-

divisions (a) to (h), inclusive, of said petition for review. Further answering, the Board avers that its said order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2051, entitled "In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C. I. O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a Nevada corporation having its principal place of business in Los Angeles, California, within this judicial circuit. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Case No. C-2051 before the Board, including, without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument thereon, as more fully shown by the entire record of Case No. C-2051 certified by the Board and filed

with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative

of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2051 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in said proceedings before the Board to be

served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June 1942.

ERNEST A. GROSS
Associate General Counsel
National Labor Relations Board

(Duly verified.)

[Endorsed]: Filed Jun. 10, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW (No. C-2051)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth District:

Stockholders Publishing Company, Inc., petitioner herein, herewith files with the Clerk of this

Court its concise statement of points on which petitioner intends to rely on its petition for review, all in accordance with paragraph 6 of rule 19 of Rules of Court:

1. That there is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the business or activities of petitioner involved in this proceeding have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

2. That there is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the newsboys, as distinguished from so-called wholesalers or checkmen, involved in this proceeding and within the claimed bargaining unit were or are employees of petitioner within the meaning of Section Two (Three) of the Act.

3. That there is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the claimed bargaining unit was or is an appropriate unit or that Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. has been or still is the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section Nine (a) of the Act.

4. The relationship of petitioner with its newsboys (alleged employees of petitioner) is not sub-

ject to the jurisdiction of the National Labor Relations Board.

Respectfully submitted,

STOCKHOLDERS PUBLISHING COMPANY, INC. (Publishers of Daily News at Los Angeles)

By BINFORD & BINFORD
L. B. BINFORD
HOWARD M. BINFORD
By HOWARD M. BINFORD
Its Attorneys

AFFIDAVIT OF SERVICE OF POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW

United States of America,
State of California,
County of Los Angeles—ss.

Howard M. Binford, being first duly sworn, deposes and says:

That he is and at all times herein referred to was a citizen of the United States of America and over eighteen (18) years of age; that on July 11, 1942, he caused the annexed Points on Which Petitioner Will Rely on its Petition for Review to be served upon National Labor Relations Board by on that date depositing for transmission by registered mail in the United States Post Office at Los Angeles, California, enclosed in sealed envelopes, addressed to William R. Walsh, Esq., Regional Director for

the Twenty-First Region, United States Post Office and Court House, Los Angeles, California, and National Labor Relations Board, Shoreham Building, Washington, D. C., with registered postage thereon fully prepaid, true copies of said Points on Which Petitioner Will Rely on its Petition for Review.

HOWARD M. BINFORD

Subscribed and sworn to before me this 11th day of July, 1942.

V. I. MacMAHON

Notary Public in and for said County and State.

[Endorsed]: Filed Jul. 14, 1942.

United States Circuit Court of Appeals
For the Ninth Circuit
No. 10115

HEARST PUBLICATIONS, INCORPORATED,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Hearst Publications, Incorporated, a California corporation, a party aggrieved by a final

order of the National Labor Relations Board, and files this its petition, pursuant to the provisions of section 10 (f) of the Act of Congress of July 5, 1935 (49 Stat. 449—Title 29 U. S. C. A., sections 151 to 166), known and cited as the National Labor Relations Act, for the review of the decision and final order of the National Labor Relations Board, dated March 30, 1942, directing that petitioner cease and desist from certain practices, denominated by said Board as "unfair labor practices". The proceeding resulting in said order is entitled upon the Board's records "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2023", and said case before the Board was consolidated with Case No. C-2024, entitled "In the Matter of the Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O." In support of this petition, this petitioner respectfully shows:

1. Petitioner is and at all times herein referred to was a California corporation engaged in business in the State of California, within this judicial circuit. Petitioner maintains and at all of said times has maintained an office and places of business within the State of California. Petitioner has continuously for many years maintained and operated as a separate and distinct enterprise and department of its business a newspaper printing and publishing plant at Los Angeles, California, known

as the "Los Angeles Evening Herald and Express Department", at which plant it prints a six day daily evening newspaper known as the "Los Angeles Evening Herald and Express", and sometimes in the proceedings before the Board referred to as the "Herald". A part of each issue of such newspaper is sold to newsboys, who in turn resell the same to retail purchasers on the streets of the City of Los Angeles. Petitioner has in connection with its said Los Angeles Evening Herald and Express Department an investment in plant and equipment and in press franchises, circulation and good will of a value amounting to many hundreds of thousands of dollars.

2. Respondent, National Labor Relations Board, herein referred to as the "Board" is an agency of the government of the United States of America, created pursuant to the Act of Congress of July 5, 1935 (49 Stat. 449—Title 29 U. S. C. A., sections 151 to 166), known and cited as the National Labor Relations Act. The duly appointed, qualified and acting members of said Board are now Messrs. Harry A. Millis, Wm. A. Leiserson and Gerard D. Reilly. Said Board at all times herein referred to had an office and a Regional Director for the Twenty-first Region at Los Angeles, California, within this judicial circuit and within the jurisdiction of this Court. As will hereinafter more fully appear, all of the so-called unfair labor practices, in which in this proceeding it is alleged that petitioner engaged, occurred at Los Angeles, California.

within this judicial circuit and within the jurisdiction of this Court. This Court has jurisdiction of this petition by virtue of section 10 (f) of the National Labor Relations Act.

3. On or about April 21, 1939, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., herein referred to as the "Union", filed with the Board's Regional Director for the Twenty-first Region of Los Angeles, California, a "Petition for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act." By such Petition the Union alleged that this petitioner was an employer engaged in business as "Publishers"; that certain newsboys selling papers at main spots, full-time corners and checkmen within the City of Los Angeles constituted an appropriate bargaining unit; that newsboys within such unit were employees of petitioner, and that a majority of such employees had designated the Union to be their representative for collective bargaining; that a question had arisen concerning the representation of employees in such bargaining unit, and that such question was one affecting commerce within the meaning of the National Labor Relations Act. By such petition the Union requested that the Board investigate such controversy and certify to the parties the name or names of the representatives that had been designated or selected by such newsboys. On or about February 7, 1940, the Union filed an amended petition, which said petition was amended with respect

to the allegations therein concerning the alleged appropriate unit. On or about June 10, 1940, the Union filed its second amended petition, said petition being amended with respect to the allegations therein concerning the alleged appropriate unit. Such second amended petition described the unit alleged to be the appropriate bargaining unit as "all main spot newsboys, full-time newsboys and checkmen who are engaged to sell the Los Angeles Evening Herald and Express within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys". The said proceeding before the Board was numbered Case No. XXI-R-928, and was thereafter numbered Case No. R-1924. Orders of the Board, dated March 27, 1940 and June 5, 1940, directed that said Case No. R-1924 be consolidated with three other cases known before said Board as Case No. R-1923 (formerly numbered XXI-R-927); Case No. R-1925 (formerly numbered XXI-R-1062); and Case No. R-1926 (formerly numbered XXI-R-1084), involving said Union and Stockholders Publishing Company, Inc., The Times-Mirror Company and Hearst Publications, Incorporated (Los Angeles Examiner Department) respectively.

4. Previous to the commencement of the hearing hereinafter referred to, and on or about, to-wit, June 6, 1940, petitioner duly served and filed its written motion to dismiss amended petition for investigation and certification of representatives. At and during the said hearing, by stipulation entered

into between counsel on the first day of said hearing, to-wit, June 10, 1940, petitioner's motion to dismiss was deemed to apply to the second amended petition filed in said matter. Said motion to dismiss was denied by the Board's Decision and Direction of Elections, dated January 9, 1941, hereinafter referred to. On or about June 10, 1940, this petitioner duly served and filed its written answer to said amended petition for investigation and certification of representatives, denying that it was an employer of the persons claimed to be represented by the Union, denying that the alleged bargaining unit was the appropriate bargaining unit, denying that the alleged unit included any of petitioner's employees, denying that the Union had been designated or selected as a representative for purposes of collective bargaining by such alleged unit, and denying that any question concerning the representation of such newsboys was a question affecting commerce within the meaning of the National Labor Relations Act.

Said hearing above mentioned was held at Los Angeles, California, before the Board's Trial Examiner, upon the petitions and answers in these consolidated cases. Such hearing commenced on or about June 10, 1940 and continued to on or about June 27, 1940.

5. By its decision and direction of elections in said consolidated cases, dated January 9, 1941, the Board directed that elections be conducted among certain newsboys engaged in street sales of the news-

papers published by the companies involved. It was thereby directed that an election be held among newsboys engaged in the street sale of petitioner's newspaper as follows:

> "All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, to determine whether such newsboys desired to be represented by the Union for purposes of collective bargaining."

This decision and direction of elections was subsequently amended by "Fourth Amendment to Decision and Direction of Elections", dated April 12, 1941, by striking therefrom the second paragraph of Section VI of the Decision (appearing on page 17 of the original Decision) and substituting therefor, as a separate paragraph, the following:

> "Thus defined, with respect to the Los Angeles Evening Herald and Express, the term 'full-time' newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week; the term 'part-time' newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week."

6. Prior to the holding of the election ordered, it was agreed between a representative of the

Board and this petitioner that the participation of this petitioner in any discussion relative to the conduct of such election should not be deemed acquiescence by this petitioner in the correctness of the ruling of the Board on January 9, 1941, as amended, directing the holding of such election, nor be deemed a waiver of petitioner's contention that the Board had no jurisdiction over it with respect to the subject matter of such controversy. Also prior to such election, and on or about May 14, 1941, petitioner filed a challenge to the vote of each and every voter or person attempting to vote at the election ordered by the National Labor Relations Board and objection to the holding of said election, which said challenge and objection was overruled by William R. Walsh, Acting Regional Director, Twenty-first Region, National Labor Relations Board, in that certain election report dated May 17, 1941. On or about May 14, 1941, an election was conducted under the direction and supervision of the Board's Regional Director for the Twenty-first Region among full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, within said group, and said Regional Director thereafter, and on or about May 17, 1941, filed his report with reference to such election. On or about May 23, 1941, petitioner duly served and filed its written "Objections to the Conduct of the Ballot and to the Election Report." On May 26, 1941, the Re-

gional Director issued his "Report on Objections", and said objections were overruled by the Board by its certain "Supplemental Decision and Certification of Representatives", dated July 30, 1941.

7. The Board, by its "Supplemental Decision and Certification of Representatives", dated July 30, 1941, certified that as a result of said election the Union had been designated and selected by a majority "of all employees" of this petitioner "Who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, as their representative for the purposes of collective bargaining" and that the Union was the exclusive representative of "all such employees" for the purposes of collective bargaining. The proceedings before the Board, referred to in this and preceding paragraphs, will be herein referred to as the "representation proceedings".

8. On or about October 25, 1941, the Board issued its complaint against petitioner, alleging, among other things, that the Union was a labor organization within the meaning of the National Labor Relations Act; that a unit for the purposes of collective bargaining, composed of full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, would insure to such employees the full benefit of their right to self-organization and collec-

tive bargaining, and that such unit was appropriate for the purposes of collective bargaining; that by May 14, 1941, or before that date, a majority of the employees of this petitioner within such unit had designated the unit as their representative for the purpose of bargaining collectively with petitioner, and that this majority status of the Union within such unit had continued up to and including the date of such complaint; that petitioner had continuously failed and refused to bargain collectively in good faith with the Union; that by such failure and refusal petitioner had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act; that the acts of petitioner in connection with the operation of its business had a close, intimate and substantial relation to trade, traffic and commerce among the several states and tended to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce; and that the acts of petitioner constituted unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the National Labor Relations Act. This proceeding before the Board was numbered Case No. XXI-C-1840, and was thereafter numbered Case No. C-2023, and by order of the Board, dated October 23, 1941, was ordered consolidated with Case No. XXI-C-1843, thereafter numbered Case No. C-2024, involving The Times-Mirror Company and the said Union.

9. That on or about November 7, 1941, this petitioner duly served and filed its written answer to said complaint, wherein, among other matters, it denied the allegations of said complaint hereinbefore referred to, except that it admitted that it had refused to bargain collectively with the Union and alleged that such refusal was in good faith and upon the advice of competent counsel and in the bona fide belief that the National Labor Relations Board had no jurisdiction over petitioner with respect to petitioner's relationship with the newsboys referred to in the complaint, who were independent contractors and not employees. By such answer petitioner also affirmatively alleged that the Board had no jurisdiction over petitioner; that petitioner was not engaged in interstate or foreign commerce; that no member of the Union was an employee of petitioner; that the persons within the alleged bargaining unit were not petitioner's employees; that the newsboys referred to in the complaint were engaged solely in intrastate commerce and were not engaged in interstate commerce or in any business activity having a close, intimate or substantial, or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries; that no refusal of petitioner to bargain with the Union could burden or obstruct commerce or lead or tend to lead to a labor dispute, burdening or affecting commerce or the free flow of commerce; that no cessation of the newsvending ac-

tivities of the members of the Union or the newsboys referred to in the complaint would burden or obstruct commerce or the free flow of commerce, or lead to or tend to lead to a labor dispute burdening or affecting commerce or the free flow of commerce, and that the Board had no jurisdiction over the relations of petitioner with persons engaged in the independent business of vending the newspaper published by petitioner.

10. On or about November 7, 1941, this petitioner duly served and filed its written motion to dismiss said complaint, urging therein as grounds therefor the matters to which reference is made in paragraph 9 hereinabove. At the subsequent hearing upon said complaint, such motion was denied by the Board's Trial Examiner.

11. On November 10th and 12th, 1941, a hearing was held at Los Angeles, California, before the Board's Trial Examiner, upon said complaint and answer, as well as upon the complaint and answer in said Case No. C-2024. At such hearing a written stipulation was made by representatives of this petitioner, the Union and the Board, and offered in evidence by the Board's attorney and received in evidence, by which it was agreed that there had been no material change in the conduct of the business of petitioner since the hearing in the representation proceedings in June, 1940, and that, if all the witnesses called by the Union, the Board and petitioner at such representation hearing were

called testify in this complaint proceeding, their testimony would be substantially the same as their testimony given at such hearing in the representation proceedings, provided that nothing in said stipulation contained would be deemed to constitute an admission by petitioner that such testimony was sufficient to support a finding of fact or conclusion of law that the members of the Union, or any of them, were employees of petitioner, or constitute a waiver by petitioner of its right to contend that the evidence taken at the hearing in the representation proceedings was insufficient to show that any member of the Union or any of the persons within the unit which had been held by the Board to be appropriate was an employee of petitioner, or a waiver of petitioner's right to contend on all or any of the grounds urged before, at, or after said hearing in the representation proceedings, or on all or any of the grounds urged in petitioner's motion to dismiss the complaint in said Case No. C-2023, that the Board had no jurisdiction over petitioner, and that petitioner by entering into such stipulation did not admit, consent or agree that any of the members of the Union was an employee of petitioner within the purview of the National Labor Relations Act, and did not thereby or at all consent to or subject itself to the jurisdiction of the Board, and did not waive any of the grounds of objection theretofore asserted and maintained in the representation proceedings and

by its answer and motion to dismiss in said Case No. C-2023.

12. Thereafter such Trial Examiner issued his "Intermediate Report", dated December 4, 1941, finding that this petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the National Labor Relations Act, and recommending that this petitioner cease and desist from such unfair labor practices, and, upon request, bargain collectively with the Union. That on or about January 5, 1942, this petitioner duly served and filed with the Board written exceptions to such Intermediate Report and other parts of the record and proceeding and a brief in support thereof. On January 22, 1942, a hearing for the purpose of oral argument was held before the Board at Washington, D. C.

13. Thereafter the Board issued its decision and order, dated March 30, 1942; which order is now a final order of the Board. This order, upon the basis of certain findings of fact and conclusions of law, directs that petitioner shall cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of its employees, who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, exclud-

ing bootjackers, temporary, casual and part-time newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

and that petitioner shall take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty consecutive days from the date of posting, stating (1) that petitioner will not engage in the conduct from which it is ordered to cease and desist, and (2) that petitioner will take the affirmative action set forth in the next preceding paragraph;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this order, what steps petitioner has taken to comply therewith.

On April 8, 1942, petitioner notified the Board's Regional Director for the Twenty-first Region, in writing, that it had taken no steps to comply with such order, desiring that underlying questions in this controversy be finally determined, and that for the purpose of insuring speedy determination of such questions, it would file a petition for review of said order, pointing out that such questions and petitioner's reasons for non-compliance with the Board's order had already been stated in various pleadings filed by petitioner, and particularly in petitioner's exceptions to said Intermediate Report. The proceedings before the Board referred to in this paragraph and in paragraphs 8 to 12 inclusive will be herein referred to as the "complaint proceedings".

14. The order of the Board, dated March 30, 1942, and the purported findings of fact and conclusions of law upon which such order is based, and each and every order and proceeding taken or made by the Board as a basis or predicate for said order, are, and each of the same is erroneous, invalid, void, contrary to law and prejudicial to this petitioner, and in this connection petitioner alleges and specifies the following errors by which petitioner is aggrieved.

15. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act.

16. There is no substantial evidence to support the Board's finding (Findings of Fact II) that the Union admitted or admits to membership employees of petitioner.

17. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 2; III, A, 3) that the Union was the duly designated bargaining representative of a majority of petitioner's employees in the unit referred to in said order, and that the Union was and is the exclusive representative for the purposes of collective bargaining of all employees of petitioner in such unit.

18. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that this petitioner on August 12, 1941, and at all times thereafter interfered with, restrained and coerced its employees in the exercise of rights guaranteed under the National Labor Relations Act.

19. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 1) that full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, constituted or constitute

a unit appropriate for the purposes of collective bargaining, and that such unit insures to employees of petitioner the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the National Labor Relations Act.

20. The Board's Trial Examiner, at the hearing of November 12, 1941, erroneously excluded evidence tending to establish a fact contrary to the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding are employees within the meaning of the National Labor Relations Act, by rejecting an offer in evidence of certain transcripts of testimony and findings and awards in proceedings before the Industrial Accident Commission of the State of California, the same being Los Angeles Evening Herald and Express rejected Exhibits 1, 2, 3, 4 and 5 inclusive.

21. The Board made its finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act solely upon evidence introduced at the hearing in said representation proceedings (June 10, 1940 to June 27, 1940), and the Board's prior determination of such employee status in said representation proceedings in the Board's decision and direction of elections, dated January 9, 1941. From such decision and direction of elections it will appear that the Board, in determining that such newsboys were

employees of this petitioner, has considered and relied upon evidence received at such hearing in said representation proceedings which was and is wholly inapplicable to the full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, inasmuch as such evidence related solely to the activities and status of newsboys engaged in street sales of other newspapers published by other parties.

22. There is no substantial evidence to support the Board's finding (Findings of Fact, IV) that the activities of petitioner, occurring in connection with its operations referred to in the Board's findings, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

23. The Board erred in its conclusion of law (1) that the Union is a labor organization within the meaning of the National Labor Relations Act.

24. The Board erred in its conclusion of law (2) that all full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, were employees of petitioner and constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

25. The Board erred in its conclusion of law (4) that the Union has been and still is the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

26. The Board erred in its conclusion of law (5) that by refusing to bargain collectively with the Union as such exclusive representative, petitioner has engaged in or is engaging in unfair labor practices within the meaning of the National Labor Relations Act.

27. The Board erred in its conclusion of law (6) that petitioner has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in the National Labor Relations Act, and that petitioner has engaged in and is engaging in unfair labor practices within the meaning of the National Labor Relations Act.

28. The Board erred in its conclusion of law (7) that such unfair labor practices are unfair labor practices affecting commerce within the meaning of the National Labor Relations Act.

29. The Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are petitioner's employees within the meaning of the National Labor Relations Act was and is contrary to the evidence that such newsboys purchased their merchandise at a wholesale price and for their remuneration depended upon profit

from their retail sales, the volume of such profit being dependent upon their success in conducting such retail sales; that the methods used in attracting customers were determined by the newsboys themselves; that the question whether credit should be extended to customers was determined by each newsboy upon his own initiative, and that he stood all such credit losses; that the newsboys hired others to assist them and made a profit in so doing; that the newsboys bought and sold locations between themselves at large prices; that the right to sell competing publications at the same time was exercised by such newsboys, and that no allocation of time spent as between the competing publications could be made; that the right to cooperate with newsboys selling competing publications was exercised by the newsboys for their mutual benefit; that the newsboys were and are known to petitioner only as sales outlets and occupied no different position than that occupied by other retail sellers of petitioner's newspapers, such as drug stores, cigar stands and news stands; as well as other evidence showing that such newsboys were independent contractors or independent merchandisers as distinguished from employees. Said finding is also in disregard of and contrary to decisions of the highest courts of California and other states (heretofore relied upon by petitioner in its business and operations) holding and declaring newsboys operating under the same or similar conditions to be independent contractors or independent merchandisers and not employees.

30. Petitioner has repeatedly and consistently contended that the newsboys involved in this proceeding were not and are not its employees within the meaning of the National Labor Relations Act, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to the validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's Intermediate Report in said complaint proceeding.

31. The Board's finding (Findings of Fact III, A, 1) that all full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, constituted and constitute a unit appropriate for the purposes of collective bargaining, was and is contrary to evidence that this petitioner's newspaper was and is sold on the streets by many newsboys who do not come within this limited and arbitrary definition of appropriate unit. There was no evidence showing that such unit was designated for the purposes of joining a single group of alleged employees having a mutual interest in the objects of collective bargaining, or that the newsboys within such unit had or have any community interest distinguishable from newsboys

who are not included therein, or that the newsboys within such unit perform a different type or character of work from that performed by newsboys excluded therefrom, or that they have different skill or qualifications from those of the newsboys who are excluded, or that their experience or training is different from the experience or training of the newsboys excluded, or that their duties and responsibilities are different from those of the newsboys excluded.

32. Petitioner has repeatedly and consistently contended that the designated bargaining unit was not an appropriate unit, such contention having been made before the Board in petitioner's objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer, and its exceptions to the Trial Examiner's Intermediate Report in said complaint proceedings.

33. The Board's finding (Findings of Fact, IV) that the activities of petitioner occurring in connection with its operations have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, was and is contrary to evidence that the full-time newsboys and checkmen engaged to sell the Herald within

Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, (the only newsboys involved in this proceeding) had nothing to do with interstate sales of petitioner's newspaper, and that their activities did not and could not have any relation to, newspapers sent out of the state, and that a dimunition or complete cessation of street sales in Los Angeles would not diminish the volume of interstate sales. A refusal of petitioner to bargain with the Union would not increase or diminish or burden in any manner or affect the volume of interstate sales of petitioner's newspaper, or the volume of raw material received by it from other states incident to the production of its newspaper, e. g., newsprint, mats, news service, and material pertaining to features and advertising, or the volume of intangibles, e. g., news service and news items sent by it from this state into interstate commerce.

34. Petitioner has repeatedly and consistently contended that such activities have not had and do not have any close or intimate or substantial relation to trade, traffic and commerce among the several states, or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to the validity of direction of elections and exceptions to the same and blanket objection to the ballot, and

its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's Intermediate Report in said complaint proceedings.

35. There is no substantial evidence to support the Board's finding (III) in its decision and direction of elections, dated January 9, 1941, that the newsboys here involved are within the definition of employees as that term is used in the National Labor Relations Act, or its finding therein (IV) that questions have arisen concerning the representation of employees of petitioner, or its finding therein (V) that the questions concerning representation which have arisen have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, or its finding therein (VI) that all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, constitute a unit appropriate for the purposes of collective bargaining, and the Board's conclusions of law in said decision and direction of elections, based upon said findings, are erroneous.

36. There is no substantial evidence to support the Board's finding in its certification of repre-

sentatives, dated May 17, 1941, that an election was conducted on May 14, 1941, among employees of petitioner, and the Board's certification that the Union has been designated and selected as a representative for the purposes of collective bargaining by a majority of all employees of petitioner within a certain group, and that all full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, are employees of petitioner, and that the Union is the exclusive representative of all such employees for the purposes of collective bargaining, is erroneous.

37. The Board erred in denying the motion of petitioner in said representation proceedings to dismiss the petition for investigation and certification of representatives.

38. The Board erred in overruling petitioner's challenge to the vote of each and every voter or person attempting to vote at the election ordered by the National Labor Relations Board to be held on May 14, 1941, which said written challenge was dated and filed May 14, 1941.

39. The Board erred in overruling petitioner's "Objections to the Conduct of the Ballot and to the Election Report".

40. The Board erred in denying the motion of petitioner to dismiss the complaint in said complaint proceedings.

41. The Board erred in its finding and ruling that the exceptions filed by this petitioner on January 5, 1942, to the Intermediate Report of the Trial Examiner in said complaint proceedings are without merit insofar as the same are inconsistent with the Board's findings of fact, conclusions of law, and order, dated March 30, 1942.

42. Said decision and direction of elections, dated January 9, 1941, exceeds the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprives this petitioner of its property without due process of law and thereby violates Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, Section 13, of the Constitution of California.

43. Said order of the Board, dated March 30, 1942, and each and every part thereof, and each and every order and proceeding taken or made by the Board as a basis or predicate therefor, or upon which said order of March 30, 1942, is or may be based, exceed the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprive this petitioner of its property without due process of law and thereby violate Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, Section 13 of the Constitution of California.

Wherefore, petitioner respectfully petitions and prays:

1. That respondent be required, in conformity with law, to certify to this Honorable Court a transcript of the entire record in these proceedings, including all pleadings, testimony and evidence upon which said order of March 30, 1942, was entered, all papers filed with the Board by petitioner in these proceedings, and all findings, conclusions and orders of the Board affecting this petitioner; and including also the Board's certification and the entire record of its investigation under section 9 (c) of the National Labor Relations Act, herein referred to as the representation proceedings, together with all pleadings, testimony and evidence, and all papers filed with the Board in such representation proceedings, and all findings, conclusions and orders of the Board affecting petitioner therein; and

2. That the Board's findings, conclusions and order of March 30, 1942, as well as all proceedings and orders taken and made by or before the Board as a basis or predicate for said order of March 30, 1942, be reviewed by this Honorable Court; that said order of March 30, 1942, be set aside, vacated and annulled in so far as it relates to this petitioner; and that the complaint against this petitioner be dismissed; and

3. That this Honorable Court exercise its jurisdiction over the parties and the subject matter of this petition, and grant to petitioner such other

and further relief in the premises as the rights and equities of the cause may require.

[Seal] HEARST PUBLICATIONS,
INCORPORATED
By FRANK F. BARHAM
Vice-President
By LAURENCE MITCHELL
Secretary
FLINT & MAC KAY,
H. S. MAC KAY, Jr.,
EDWARD L. COMPTON, and
DONALD W. HAMBLIN
By EDWARD L. COMPTON
Its Attorneys

(Duly verified.)

[Endorsed]: Filed Apr. 24, 1942.

[Title of Circuit Court of Appeals and Cause No. 10115.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Edward J. Gain, being first duly sworn, deposes and says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 1232 Rowan

Building in the City of Los Angeles, County of Los Angeles, State of California.

That on the 27th day of April, 1942, affiant served a true and correct copy of "Petition for Review of Final Order of National Labor Relations Board" in the above entitled and numbered matter, heretofore and on April 24, 1942, filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, and "Notice of Filing of Petition for Review of Final Order of National Labor Relations Board," a true and correct copy of which is attached hereto, marked "Exhibit A," and by reference incorporated herein, by placing said copy of "Petition for Review of Final Order of National Labor Relations Board" and said "Notice of Filing of Petition for Review of Final Order of National Labor Relations Board" in an envelope addressed as follows:

"National Labor Relations Board,
Washington, D. C."

and by then sealing said envelope and depositing the same, registered mail, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California; that there is delivery service by United States mail at the place so addressed and there is regular communication by mail between the place of mailing and the place so addressed.

That on the 27th day of April, 1942, affiant served a true and correct copy of said "Petition for Review of Final Order of National Labor Relations"

and a true and correct copy of said "Notice of Filing of Petition for Review of Final Order of National Labor Relations Board" on William R. Walsh, Director, National Labor Relations Board, Twenty-first Region, by placing said true copies in an envelope addressed as follows:

"William R. Walsh, Director,
National Labor Relations Board,
Twenty-first Region,
U. S. Post Office and Courthouse,
Los Angeles, California,"

and by then sealing the said envelope and depositing the same, registered mail, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the offices of said William R. Walsh, Director, National Labor Relations Board, Twenty-first Region. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

EDWARD J. GAIN

Subscribed and sworn to before me this 27th day of April, 1942.

[Seal] MARTHA S. DuBOIS,
Notary Public in and for the
County of Los Angeles,
State of California.

EXHIBIT A

[Title of Circuit Court of Appeals and Cause No. 10115.]

NOTICE OF FILING OF PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD

To the National Labor Relations Board, and to William R. Walsh, Director, Twenty-first Region, National Labor Relations Board:

You, and each of you, will please take notice that Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) filed on April 24, 1942, in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, San Francisco, California, its certain "Petition for Review of Final Order of National Labor Relations Board," numbered and captioned as above, seeking a review of that certain Final Order of the National Labor Relations Board, dated March 30, 1942, and made in that certain matter, entitled and numbered in the files of the National Labor Relations Board as follows: "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2023," a copy of which said "Petition for Review of Final Order of National Labor Relations Board" is served herewith, and to which reference is hereby made for further particulars.

Dated at Los Angeles, California, this 27th day of April, 1942.

FLINT & MacKAY,
H. S. MacKAY, JR.,
EDWARD L. COMPTON, and
DONALD W. HAMBLIN
By EDWARD L. COMPTON,
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department)

[Endorsed]: Filed Apr. 29, 1942.

[Title of Circuit Court of Appeals and Cause No. 10115.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and this request for enforcement of the Board's order.

1. Answering the allegations of paragraphs 1, 29, 31, and 33 of the petition for review, the Board prays reference to the certified record of the pro-

ceeding before the Board filed herein, for a full and exact statement of the findings of fact, conclusions of law, and order of the Board. To the extent that said allegations relate to matters not in issue in the proceeding before the Board and not therefore covered by or dealt with in the findings of fact, conclusions of law, and order of the Board, dated March 30, 1942, the Board alleges that they are irrelevant and immaterial to the issues in this case and neither admits nor denies them; to the extent that the said allegations relate to matters in issue in the proceeding before the Board and conflict with said findings of fact, conclusions of law, and order, the Board denies them.

2. The Board admits the allegations of paragraph 2 of the petition for review.

3. Answering the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 30, 32, and 34 of said petition for review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

4. The Board denies each and every allegation of error contained in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36, 37, 38, 39, 40, 41, 42, and 43 of said petition for review. Further answering, the Board avers that its said order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further Answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2023, entitled, "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a California corporation with its principal office and place of business in San Francisco, California, within this judicial district. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Cost No. C-2023 before the Board, including, without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument thereon, as more fully shown by the entire record in Case No. C-2023 certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its

findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2(a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2023 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to

review and enforcing in whole said order of the Board set forth above and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June, 1942.

ERNEST A. GROSS,
Associate General Counsel,
National Labor Relations Board.

(Duly verified.)

[Endorsed]: Filed June 10, 1942.

[Title of Circuit Court of Appeals and Cause No. 10115.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

To:

The Honorable the Justices of the United States Circuit Court of Appeals for the Ninth Circuit:

Honorable Paul P. O'Brien, Clerk of the Above Entitled Court:

National Labor Relations Board:

Pursuant to the provisions of Rule 19, Paragraph 6, of the Rules of Practice of this Court, Petitioner, Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department), states that the points upon which it intends to rely in this Court in this proceeding are as follows:

1. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the newsboys engaged in the street sale of the Los Angeles Evening Herald and Express, the newspaper published by petitioner, in so far as such vending activities are concerned, were or are employees of petitioner.

2. The relationship of petitioner with newsboys engaged in the street sale of the Los Angeles Evening Herald and Express, in so far as such vending activities are concerned, is not subject to the jurisdiction of the National Labor Relations Board.

3. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that newsboys engaged in the street sale of the Los Angeles Evening Herald and Express, included within the unit claimed by the Board to be an appropriate unit, in so far as their said vending activities are concerned, were or are employees of petitioner.

4. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the claimed unit was or is an appropriate unit.

5. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that questions have arisen concerning the representation of employees of this petitioner.

6. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the activities of petitioner involved in this proceeding occurring in connection with its operations have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of the National Labor Relations Act.

Respectfully submitted,

HEARST PUBLICATIONS, INCORPORATED, (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT)

By FLINT & MacKAY,
H. S. MacKAY, JR.,
EDWARD L. COMPTON, and
DONALD W. HAMBLIN,

By EDWARD L. COMPTON,
Attorneys for Petitioner.

[Title of Circuit Court of Appeals and Cause No. 10115.]

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

United States of America,
State of California,
County of Los Angeles—ss.

B. B. De Klotz, being first duly sworn, deposes and says:

That affiant is a citizen of the United States, over the age of eighteen years, a resident of Los Angeles County and not a party to the within and above entitled proceeding; that affiant's business address is 1232 Rowan Building, Los Angeles, California. On July 13, 1942, affiant served a copy of the attached "Statement of Points upon Which Petitioner Intends to Rely" on National Labor Relations Board by placing a true copy of said "Statement of Points upon Which Petitioner Intends to Rely" in an envelope addressed to National Labor Relations Board at its office address, viz:

"National Labor Relations Board,
Washington, D. C."

and on said date affiant served a copy of said "Statement of Points upon Which Petitioner Intends to Rely" on William R. Walsh, Regional Director, National Labor Relations Board, Twenty-first Re-

gion, by placing a true copy of said "Statement of Points upon Which Petitioner Intends to Rely" in an envelope addressed to William R. Walsh at his office address, viz:

"William R. Walsh, Regional Director,
Twenty-first Region,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with registered postage thereon fully prepaid, in the United States mails at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

B. B. DE KLOTZ

Subscribed and sworn to before me this 13th day of July, 1942.

[Seal] MARTHA S. DuBOIS,
Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed July 14, 1942.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10123

THE TIMES-MIRROR COMPANY, a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION TO REVIEW ORDER OF NATIONAL LABOR RELATIONS BOARD

To the Honorable the Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

The Times-Mirror Company, a corporation, publisher of Los Angeles Times, a daily and Sunday morning newspaper, being a party aggrieved by a certain final order entered March 30, 1942, by National Labor Relations Board (hereafter called "Board") in a proceeding instituted by the Board against petitioner, appearing and designated upon the records of the Board as "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2024", respectfully petitions this Honorable Court for a review of said order, and in support of its petition your petitioner respectfully shows:

1. Petitioner is and at all times herein mentioned was a corporation organized and existing under the

laws of the State of California, maintaining its printing plant and principal place of business in the City of Los Angeles, State of California, within the judicial circuit as above captioned. In the aforementioned proceeding, to wit, Case No. C-2024, it was alleged in the Complaint issued by the Board, and the Board thereafter found, that petitioner engaged in unfair labor practices (refusal to bargain collectively with the designated representative of newsboys selling the Los Angeles Times) in the City of Los Angeles, State of California.

This court has jurisdiction of this petition by virtue of Sec. 10(f) of the National Labor Relations Act (29 USCA 160(f); 49 Stat. 449) (hereafter called "Act").

2. Upon filing by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., an alleged labor union (hereafter called "Newsboys Union"), of a Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the Act, the Regional director of the Board, Twenty-first Region, did on April 12, 1940, issue a notice of hearing to be held May 16, 1940, and thereafter and on May 15, 1940, said Regional Director issued an amended notice of hearing advising that said hearing would be held June 10, 1940. Said proceeding is designated upon the records of the Board as "In the Matter of Times Mirror Co. and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O", Case No. R-1925, and is hereafter called the "Certification Case."

3. Thereafter and on June 4, 1940, petitioner filed with said Regional Director a Motion to Dismiss Petition for Investigation, and an Answer thereto. Said Motion to Dismiss Petition for Investigation challenged the jurisdiction of the Board on the grounds that (a) the members of the Newsboys Union are not employees of petitioner; (b) members of the Newsboys Union are independent contractors; (c) no question affecting commerce had arisen or can arise concerning the representation of the alleged employees; (d) the Board has no jurisdiction over the petitioner or the business conducted by it; (e) the relations of petitioner with the alleged employees are not subject to the jurisdiction of the Board; and (f) no claimed labor dispute between petitioner and the alleged employees can affect commerce within the meaning of the Act.

4. On June 4, 1940, said Newsboys Union filed an Amended Petition for Investigation and Certification, to which amended Petition it was stipulated that said Motion to Dismiss and said Answer of petitioner theretofore filed should be deemed applicable.

5. Said Certification Case came on for hearing at Los Angeles, California, on June 10, 1940 before Thomas H. Kennedy, Trial Examiner, and proceeded from day to day until June 27, 1940.

6. On January 9, 1941, the Board made and entered its Decision and Direction of Elections in said Certification Case. In said Decision and Direction of Elections the Board determined that the news

vendors in question were employees of petitioner. The Board denied petitioner's Motion to Dismiss Petition for Investigation, and directed an election to be held for the purpose of determining representatives among

> "All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * * to determine whether or not said employees desire to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for the purposes of collective bargaining."

7. On or about May 9, 1941, petitioner filed with the Regional Director of the Board, Twenty-first Region, its "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in said Election (Times Unit)", asserting as grounds therefor the same grounds assigned in support of its said Motion to Dismiss Petition for Investigation. On May 21, 1941, the Board made and entered its Order overruling said Objections and Exceptions of petitioner.

8. On May 15, 1941, an election was held as directed by said Decision and Direction of Elections, and thereafter on June 2, 1941, the Regional Director of said Board, Twenty-first Region, issued his Election Report finding as follows:

Total on eligibility list	457
Total ballots cast	309
Total ballots challenged	108
Total blank ballots	2
Total void ballots	2
Total ballots not counted	112
Total votes counted	197
Total votes for the Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	131
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	66

9. On June 6, 1941, petitioner filed with the Regional Director of the Board, Twenty-first Region, its Objections to the Conduct of the Ballot and to the Election Report, and thereafter on June 12, 1941, said Regional Director issued his Report on Objections overruling each of the objections made by petitioner.

10. On July 30, 1941, the Board made and entered its Supplemental Decision and Certification of Representatives sustaining and affirming the rulings of the Regional Director overruling petitioner's Objections to the Conduct of the Ballot and to the Election Report, and in said Supplemental Decision certified

> "* * * that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los

Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining, and * * * is the exclusive representative of all such employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

11. On or about September 3, 1941, said Newsboys Union filed a charge against petitioner, pursuant to Sec. 10(b) of the Act, alleging that petitioner was engaged in an unfair labor practice in that it has refused to recognize and bargain with said Newsboys Union. Thereafter on October 25, 1941, said Board, by its Regional Director, Twenty-first Region, issued a Complaint against petitioner in a proceeding designated upon the records of the Board as "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.", Case No. C-2024 (XXI-C-1843), and also issued a Notice of Hearing of said charge and complaint before a Trial Examiner of the Board, to be held November 10, 1941. This proceeding is hereafter called the "Complaint Case."

12. November 4, 1941, petitioner filed with said Regional Director its Motion to Dismiss Complaint, and also an Answer thereto. The grounds of said Motion to Dismiss were the same as those assigned

in support of petitioner's Motion to Dismiss Petition for Investigation ("Certification Case").

13. Said matter came on for hearing and was heard at Los Angeles, California, on November 10, 1941, and November 12, 1941, before W. P. Webb, Trial Examiner.

14. On December 4, 1941, said Trial Examiner made and filed his Intermediate Report. To said Intermediate Report petitioner duly and regularly filed its Exceptions (and Brief in support thereof) as permitted by Article II, Section 33, of National Labor Relations Board Rules and Regulations—Series 2, as amended. On January 22, 1942, oral argument of said Exceptions to said Intermediate Report was had before the Board convened at Washington, D. C.

15. On March 30, 1942, the Board entered its Decision and Order in said Complaint Case. Said Order, for a review of which this petition is filed, is as follows:

> "Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, * * * the National Labor Relations Board hereby orders that the respondent, The Times-Mirror Company, and its officers, agents, successors, and assigns, shall:
>
> 1. Cease and desist from:
>
> (a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are news-

boys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days

from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

Errors in the Decision in the Certification Case.

16. The Decision of the Board dated January 9, 1941, in the Certification Case (No. R-1925) was erroneous in the following respects:

(a) In denying petitioner's Motion to Dismiss Petition for Investigation.

(b) Finding II is not supported by substantial evidence and is erroneous as a conclusion of law. It reads:

"Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(c) That part of Finding III reading:

"Accordingly, we find that the newsboys in-

volved in this proceeding are employees within the meaning of Section 2 (3) of the Act."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(d) That part of Finding IV reading:

"We find that questions have arisen concerning the representation of employees of the Companies."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(e) Finding V is not supported by substantial evidence and is erroneous as a conclusion of law. It reads:

"We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(f) That part of Finding VI reading:

"* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * *. We further find that said units will

insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(g) That part of Finding VII reading:

"At the hearing lists prepared by * * * the Times were introduced in evidence purporting to show the following approximate current number of newsboys employed * * *:

* * * * * * *

"Times ..... 627"

is not supported by substantial evidence and is erroneous as a conclusion of law.

(h) The Board's conclusions of law numbered 1 and 2(c) are erroneous. They read:

"1. Questions affecting commerce have arisen concerning the representation of employes of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

"2. The following employees of * * * The Times-Mirror Company * * * of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act:

(c) all newsboys engaged in the street sale of the Times at established spots 4 or more

hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * *."

17. The Board erred in overruling (on May 21, 1942) petitioner's "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)."

18. The Supplemental Decision and Certification of Representatives of the Board, dated July 30, 1941, in the Certification Case, was erroneous in the following respects:

(a) In overruling petitioner's "Objections to the Conduct of the Ballot and to the Election Report."

(b) In certifying

"that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining * * * in respect to rates of pay, wages, hours of employment, and other conditions of employment."

Errors in the Decision and Order in the Complaint Case.

19. The Decision and Order of the Board, dated March 30, 1942, in the Complaint Case (No. C-2024), herein sought to be reviewed, was erroneous in the following respects:

(a) In affirming the ruling of the Trial Examiner denying petitioner's Motion to Dismiss Complaint.

(b) In affirming the ruling of the Trial Examiner rejecting petitioner's offer in evidence of certain exhibits designated in the record herein as "The Times-Mirror Company's Rejected Exhibits 1, 2-A, 2-B, 3, 4-A, 4-B and 5."

(c) Finding II is not supported by substantial evidence and is erroneous as a conclusion of law. It reads:

> "Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents."

(d) That part of Finding III (A) (1) reading:

> "We now find * * * that * * * all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining with respect to rates of

pay, wages, hours of employment, and other conditions of employment * * *."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(e) That part of Finding III (A) (2) reading:

"* * * on and at all times after July 30, 1941, with respect to * * * the Times, the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units * * * for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(f) That part of Finding III (A) (3) reading:

"* * * we hold that the newsboys are employees within the meaning of Section 2 (3) of the Act.

"We find * * * that the * * * Times * * * has * * * refused to bargain collectively with the Union as the exclusive representative of its employees in appropriate units and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(g) Finding IV is not supported by substantial evidence and is erroneous as a conclusion of law.

(h) The Board has failed to find or declare by

finding of fact or conclusion of law, or otherwise, on the issue raised by the Seventh Separate and Further Defense in the Answer of petitioner. Said defense reads:

> "The relations of respondent with the alleged employees (said newsboys selling the Los Angeles Times) are not subject to the jurisdiction of said Board."

(i) The Board has failed to find or declare by finding of fact or conclusion of law, or otherwise, on the issue raised by the Eighth Separate and Further Defense in the Answer of petitioner. Said defense reads:

> "No claimed labor dispute between respondent and said alleged employees (said newsboys selling the Los Angeles Times) can affect commerce within the meaning of the National Labor Relations Act."

(j) The Board's Conclusions of Law numbered 1, 3, 4, 5, 6 and 7 are erroneous. They read:

> "1. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.
>
> "3. The following employees of The Times-Mirror Company of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all newsboys engaged in the street sale of

the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

"4. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been at all times material herein and still is the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

"5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of all its employees in an appropriate unit, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

"6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

"7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act."

Wherefore, your petitioner prays:

1. That respondent, National Labor Relations Board, be required, in conformity with law, to cer-

tify and file with this Honorable Court a full, true and correct copy of the transcript of record and the proceedings in both the Certification Case (No. R-1925) herein referred to, and in the Complaint Case (No. C-2024), being the proceeding wherein the order herein sought to be reviewed was made.

2. That the Findings, Conclusions of Law and Order of Said Board in the Complaint Case (No. C-2024) be reviewed by this court and that said Order of March 30, 1942, in said Complaint Case be set aside, vacated, and annulled.

3. For such other and further relief as the court may deem proper in the premises.

Respectfully submitted,

THE TIMES-MIRROR COMPANY,

Petitioner.

T. B. COSGROVE,

F. J. O'NEIL,

F. B. YOAKUM, JR.,

By T. B. COSGROVE,

Its Attorneys.

(Duly verified.)

[Endorsed]: Filed May 1, 1942.

[Title of Circuit Court of Appeals and Cause No. 10123.]

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD, AND NOTICE OF FILING PETITION FOR REVIEW.

United States of America,
State of California,
County of Los Angeles—ss.

Warren E. Slaughter, being duly sworn, deposes and says:

Affiant is a citizen of the United States, over eighteen years of age, a resident of Los Angeles County, and not a party to the within and above entitled proceeding. Affiant's business address is 1031 Rowan Building, Los Angeles, California. On May 4, 1942, affiant served a copy of the Petition for Review filed in this court in the matter as above entitled, and a Notice of Filing of said petition (copy of which is attached hereto), on National Labor Relations Board by placing a true copy of said Petition for Review and said Notice of Filing of same in an envelope addressed to National Labor Relations Board at its office address, viz., "National Labor Relations Board, Washington, D. C."

and on said date affiant served a copy of said Petition for Review and a copy of said Notice of Filing on William R. Walsh, Regional Director National Labor Relations Board, Twenty-first Region, by

placing true copies of said documents in an envelope addressed to William R. Walsh at his office address, viz.,

"William R. Walsh, Regional Director
National Labor Relations Board,
United States Post Office and Courthouse, Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

WARREN E. SLAUGHTER

Subscribed and sworn to before me this 4th day of May, 1942.

[Seal] ANNABEL SMITH
Notary Public in and for the County of Los Angeles, State of California.

[Title of Circuit Court of Appeals and Cause No. 10123.]

NOTICE OF FILING PETITION FOR REVIEW IN CIRCUIT COURT OF APPEALS

To National Labor Relations Board, Washington, D. C., and to William R. Walsh, Regional Director thereof, Twenty-first Region:

You and each of you will please take notice that

on May 1, 1942, The Times-Mirror Company filed in the Circuit Court of Appeals, for the Ninth Circuit, its Petition for Review of that certain order of National Labor Relations Board dated March 30, 1942, in the proceeding entitled on your records as "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2024"; said petition is entitled and numbered as above captioned.

For further particulars you are referred to said petition, copy of which is attached hereto and served herewith.

Dated at Los Angeles, California, this 4th day of May, 1942.

T. B. COSGROVE
F. J. O'NEIL
F. B. YOAKUM, Jr.
By F. B. YOAKUM, Jr.
Attorneys for Petitioner

[Title of Circuit Court of Appeals and Cause No. 10123.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To The Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant

to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and thjs request for enforcement of the Board's order.

1. The Board admits the allegations concerning petitioner's business and this Court's jurisdiction contained in paragraph 1 of said petition for review.

2. Answering the allegations contained in paragraph 1 concerning the Board's complaint and findings, and the allegations contained in paragraphs 2 to 15, inclusive, of said petition for review, the Board prays reference to the certified transcript of the entire record of proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

3. The Board denies each and every allegation of error contained in paragraph 16, subdivisions (a) to (h) inclusive, in paragraph 17, in paragraph 18, subdivisions (a) to (b) inclusive, and in paragraph 19, subdivisions (a) to (j) inclusive, of said petition for review. Further answering, the Board avers that its order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said peti-

tion be denied insofar as it prays that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2024, entitled "Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a California corporation having its principal place of business in Los Angeles, California, within this judicial circuit. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Case No. C-2024, including without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument thereon, as more fully shown by the entire record of Case No. C-2024, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, with respect to

rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(e) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2024 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in said proceedings before the Board to be served upon petitioner and that this Court take

jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth above and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June, 1942.

ERNEST A. GROSS
Associate General Counsel,
National Labor Relations
Board.

[Endorsed]: Filed Jun. 10, 1942.

[Title of Circuit Court of Appeals and Cause No. 10123.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

To:

The Honorable the Justices of the United States Circuit Court of Appeals for the Ninth Circuit;

Honorable Paul P. O'Brien, Clerk of the above entitled Court;

National Labor Relations Board:

Pursuant to the provisions of Rule 19, Paragraph 6, of the Rules of Practice of this Court, Petitioner,

The Times-Mirror Company, states that the points upon which it intends to rely in this Court in this proceeding are as follows:

1. There is no substantial evidence to support the finding or conclusion of National Labor Relations Board that the five newsboys who testified in the proceedings conducted by the Board concerning their activities while engaged in street sales of the Los Angeles Times were or are employees of petitioner.

2. There is no substantial evidence to support the finding or conclusion of National Labor Relations Board that the newsboys engaged in street sales of the Los Angeles Times, and declared by the Board to constitute an appropriate unit, were or are employees of petitioner.

3. National Labor Relations Board erred in refusing to consider decisions of the California Industrial Accident Commission declaring the status of newsboys engaged in the street sale of Los Angeles Times to be that of independent contractors and not that of employees, and in affirming the ruling of the Trial Examiner (in Board's Case No. C-2024) wherein the Trial Examiner rejected petitioner's offer in evidence of certain exhibits designated in the Board's records as "Rejected Exhibits 1, 3, and 5."

4. There is no substantial evidence to support the finding or conclusion of National Labor Relations Board that the unit appropriate for collective bargaining purposes consisted of "

"all newsboys engaged in the street sale of the Times at established spots, 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys."

5. The relationship of petitioner with its alleged employees (i. e., newsboys engaged in the street sale of Los Angeles Times) is not subject to the jurisdiction of National Labor Relations Board.

6. No claimed labor dispute between petitioner and this alleged employees (i. e., newsboys engaged in the street sale of Los Angeles Times) can affect commerce within the meaning of National Labor Relations Act.

Respectfully submitted,
THE TIMES-MIRROR COMPANY, a corporation,

By COSGROVE & O'NEIL
T. B. COSGROVE
FRANK B. YOAKUM, Jr.,

By T. B. COSGROVE
Its Attorneys

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY.

United States of America,
State of California,
County of Los Angeles—ss.

Warren E. Slaughter, being duly sworn, deposes and says:

That affiant is a citizen of the United States, over the age of eighteen years, a resident of Los Angeles County, and not a party to the within and above entitled proceeding. Affiant's business address is 1031 Rowan Building, Los Angeles, California. On July 11, 1942, affiant served a copy of the attached "Statement of Points upon Which Petitioner Intends to Rely" on National Labor Relations Board by placing a true copy of said Statement of Points upon Which Petitioner Intends to Rely in an envelope addressed to National Labor Relations Board at its office address, viz:

"National Labor Relations Board,
Washington, D. C."

and on said date affiant served a copy of said Statement of Points upon Which Petitioner Intends to Rely on William R. Walsh, Regional Director, National Labor Relations Board, Twenty-first Region, by placing a true copy of said document in an en-

velope addressed to William R. Walsh at his office address, viz:

"William R. Walsh, Regional Director,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

WARREN E. SLAUGHTER

Subscribed and sworn to before me this 11th day of July, 1942.

[Seal] MARY IVES ANDERSON
Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed Jul. 14, 1942.

[Title of Court and Causes Nos. 10112, 10114, 10115, 10123.]

STATEMENT OF POINTS

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

the respondent herein, by its counsel, and pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the Trial of the above-entitled case to the Court:

I

The National Labor Relations Act is applicable to petitioners.

II

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, petitioners have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

III

The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 5th day of June, 1942.

ERNEST A. GROSS
Associate General Counsel
National Labor Relations Board

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10112

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10114

STOCKHOLDERS PUBLISHING COMPANY, INC.

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10115

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10123

THE TIMES-MIRROR COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

MOTION TO CONSOLIDATE

Comes now the National Labor Relations Board, respondent herein, by its Associate General Counsel, and respectfully moves that the above cases be consolidated for all purposes in this Court. In support of this motion respondent respectfully shows:

1. That all four cases were consolidated in the representation proceeding before the Board.

2. That in the complaint proceedings Cases No. 10112 and No. 10114 were heard as one consolidated case, and Cases No. 10115 and 10123 were heard as one consolidated case for the reason that the first two named cases went to hearing before the complaints were filed in the latter two.

3. That all four cases involve a refusal to bargain with one union under Section 8 (5) of the Act, which refusal is admitted but sought to be avoided on grounds presenting the same fundamental legal issues, i. e., whether the activities of petitioners affect commerce, and whether their newsboys are employees within the meaning of the Act.

4. That the methods of operation of petitioners,

insofar as they bear upon these issues, are substantially the same; that in certain instances the same newsboys sell papers for two or more of the petitioners; that the discussion of these common questions of law in one brief is feasible and would avoid unnecessary duplication of effort.

5. That consolidation of the cases would result in considerable saving to the parties, both with respect to printing and other expenses, and would result in convenience to the Court and the parties.

Wherefore, it is respectfully requested that Cause No. 10112, 10114, 10115 and 10123 be consolidated for all purposes in this Court.

Dated at Washington, D. C., this 27th day of June, 1942.

ERNEST A. GROSS
Associate General Counsel
National Labor Relations Board

So Ordered:

FRANCIS A. GARRECHT
United States Circuit Judge

[Endorsed]: Filed Jul. 1, 1942.

[Title of Circuit Court of Appeals and Causes Nos. 10112, 10114, 10115, 10123.]

ORDER RESPECTING DESIGNATION FOR PRINTED RECORD AND FILING OF BRIEFS.

Upon reading the annexed affidavits, and good cause appearing therefor, it is ordered

1. That nothing in the Order heretofore made, on, to wit: July 1, 1942, for consolidation of causes numbered 10112, 10114, 10115, and 10123, shall be taken to preclude the petitioner in each such cause from presenting separately by brief and by oral argument its case with respect to the points on which such petitioner relies on its separate petition for review;

2. That each such petitioner shall be entitled to file a separate opening brief, after which National Labor Relations Board may file separate answering briefs or a single answering brief, as it may be advised, and each petitioner thereafter may file a separate reply brief agreeably to the rules of this Court; and

3. That not more than one record shall be printed for a consideration of the four separate cases presented by the four separate petitions for review, it appearing that each such petitioner has designated for printing the same parts of the record now certified to this court.

Dated: July 14, 1942.

FRANCIS A. GARRECHT
Circuit Judge

[Title of Circuit Court of Appeals and Causes Nos. 10112, 10114, 10115, 10123.]

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF "DESIGNATION OF THE PART OF THE CERTIFIED TYPEWRITTEN RECORD AND THE PARTS OF THE PROCEEDINGS IN THIS COURT NECESSARY FOR A CONSIDERATION OF THE POINTS ON WHICH PETITIONERS WILL RELY ON THEIR RESPECTIVE SEPARATE PETITIONS FOR REVIEW" AND A COPY OF "ORDER RESPECTING DESIGNATION FOR PRINTED RECORD AND FILING OF BRIEFS" AND "SUPPORTING AFFIDAVITS"

United States of America,
State of California,
County of Los Angeles—ss.

Warren E. Slaughter, being duly sworn, deposes and says:

That affiant is a citizen of the United States, over the age of eighteen years, a resident of Los Angeles County, and not a party to the within and above entitled proceedings. Affiant's business address is 1031 Rowan Building, Los Angeles, California. On July 17, 1942, affiant served a copy of the "Designation of the Parts of the Certified Typewritten Record and the Parts of the Proceedings in this Court Necessary for a Consideration of the Points on which Petitioners Will Rely on their Respective

Separate Petitions for Review" and a copy of "Order Respecting Designation for Printed Record and Filing of Briefs" and "Supporting Affidavits" (each of said documents having been heretofore filed in the above captioned cases) on National Labor Relations Board by placing a true copy of each of said documents in an envelope addressed to National Labor Relations Board at its office address, viz:

"National Labor Relations Board,
Washington, D. C."

and on said date affiant served a copy of said "Designation of the Parts of the Certified Typewritten Record and the Parts of the Proceedings in this Court Necessary for a Consideration of the Points on which Petitioners Will Rely on their Respective Separate Petitions for Review" and a copy of "Order Respecting Designation for Printed Record and Filing of Briefs" and "Supporting Affidavits" on William R. Walsh, Regional Director, National Labor Relations Board, Twenty-first Region, by placing a true copy of said documents in an envelope addressed to William R. Walsh at his office address, viz:

"William R. Walsh, Regional
Director,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with postage thereon fully pre-

paid, in the United States Post Office at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

WARREN E. SLAUGHTER

Subscribed and sworn to before me this 17th day of July, 1942.

[Seal] MARY IVES ANDERSON
Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed Jun. 18, 1942.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10,112

HEARST PUBLICATIONS, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10,114

STOCKHOLDERS PUBLISHING COMPANY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10,115

HEARST PUBLICATIONS, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10,123

THE TIMES-MIRROR COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

June 10, 1943

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

Before: DENMAM, MATTHEWS and STEPHENS, Circuit Judges.

STEPHENS, Circuit Judge:

Four publishers of newspapers separately petition this court for the review of orders of the National Labor Relations Board, and the Board petitions this court for orders of enforcement. All of the petitions are considered and disposed of in this opinion.

Each of the four newspaper petitioners publishes a newspaper in Los Angeles, California. Hearst Publications, Incorporated, Los Angeles Examiner Department, publishes the "Examiner." Stockholders Publishing Company, Inc., publishes "The News." Hearst

Publications, Incorporated, Los Angeles Evening Herald and Express Department publishes the "Herald-Express," sometimes called the "Herald." The Times-Mirror Company publishes the "Times."

A Petition for Investigation and Certification of Representatives under § 9 (c) of the so-called Wagner Act [29 USCA § 159 (c)], was filed with the Board against each of petitioners by the Los Angeles Newsboys Local Industrial Union, No. 75, an affiliate of the Congress of Industrial Organizations. The proceedings in each case resulted in the Board's decision and direction of Elections on January 9, 1941, in which the Board found that questions affecting interstate commerce had arisen, and that designated newsboys were employees of the publisher within the meaning of § 2 (3) of the Act [29 USCA § 152 (3)] and constituted appropriate units for the purposes of collective bargaining. As the outcome of the elections directed to be held, the Board certified the Union as the bargaining representative of the newsboys within each appropriate unit.[1]

After the filing by the Union of a charge against each publisher alleging unfair labor practices, the Board issued a complaint against each stating that the Union was a labor organization within the meaning of the Act, the publisher had refused to bargain collectively with the Union, which was the chosen representative of a defined appropriate unit of the publisher's employees, that by its refusal the publisher was engaging in unfair labor practices within the meaning of § 8 (1) and (5) of the Act [29 USCA § 158 (1) and (5)], and that the said practices affected interstate commerce. The Board rendered its final Decisions and Orders on March 30, 1942, in each instance directing the publisher to cease and desist from its refusal to bargain collectively with the Union and, upon request to bargain collectively with such Union. These are the orders of which the Board seeks enforcement, and of which the publishers seek review on the ground that

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[1] The appropriate units with respect to petitioners were defined in the Board's Decision and Direction of Elections, and amendments thereto, as follows:

(a) Los Angeles Examiner: "all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys."

"* * * the term 'established spot' * * * refers to a place where a newsboy has engaged in the street sale of the Times or the Examiner, as the case may be, 5 or more days a week for a period of 6 consecutive months or more, and the term 'temporary' newsboy * * * includes a newsboy who has engaged in the street sale of the Times or the Examiner, as the case may be, at an established spot for 30 days or less."

(b) The News: "all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys."

"With respect to the News, the term 'full-time' newsboy means a newsboy who sells the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star editions and previous editions of the News for a minimum of 4 hours per day between the hours of 4 o'clock a. m. and 10 o'clock a. m., five or more days a week."

(c) Los Angeles Evening Herald and Express: "all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys."

"Thus defined with respect to the Los Angeles Evening Herald and Express, the term 'full-time' newsboy means a newsboy who regularly sells to the public 5 or more editions a day, 5 or more days a week; The term 'part time' newsboy means a newsboy who sells to the public less than 5 editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than 5 days a week."

(d) Los Angeles Times: "all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys."

"Established spot" and "temporary spot" defined under (a) herein.

there is no substantial evidence to support the findings or conclusions of the Board.

Under §§ 9 (c) and 10 (a) of the Act [29 USCA §§ 159 (c) and 160 (a)] the Board has jurisdiction over any unfair labor practice "affecting commerce." The Board found both in the certification case and in the complaint case that the unfair labor practices of each of the newspapers bore a close and substantial relation to interstate commerce and tended to lead to disputes burdening the free flow of commerce, and concluded that they affected commerce within the meaning of § 2 (6) and (7) of the Act [29 USCA § 152 (6) and (7)]. Each of the publishers distributes a small percentage of its newspapers outside the state; obtains its newsprint and mats, two of its principal raw materials, from outside the state, uses one or more of the national news and photographic wire services, publishes a number of nationally syndicated articles prepared outside the state, and devotes an appreciable percentage of its space to national advertising.

None of the publishers disputes the fact that it is engaged in interstate commerce, but each denies that any of its activities in connection with its newsboys could lead to any situation which would affect such commerce. Each advances the argument that when particular activities are intrastate in character, they are included within the scope of the Act only "if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions," National Labor Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 37. See in accord: Consolidated Edison Co. v. National Labor Board, 305 U. S. 197, 222; Santa Cruz Fruit Packing Co. v. National Labor Board, 303 U. S. 453, 467; National Labor Board v. Hearst (CCA 9), 102 Fed. (2) 658, 662.

It seems clear that the very considerable factor of street sales in connection with the interstate business being carried on by each of the newspapers concerned herein cannot be separated from other phases of such business so as to distinguish this factor as intrastate business and some other factor as interstate business. It seems likewise clear that a disturbance in the street sales distribution of any one of these metropolitan dailies would materially affect the whole business and a fortiori would affect the free flow of interstate commerce. Such a conclusion was reached by this court in connection with drivers who transported newspapers to various stations throughout the city, National Labor Board v. Star Pub. Co. (CCA 9), 97 Fed. (2d) 465. See in accord: Associated Press v. National Labor Board, 301 U. S. 103, 129; Virginia Electric & Power Co. v. National Labor Board (CCA 4), 115 Fed. (2d) 414, 415, upheld on this point 314 U. S. 469, 476.

It should be mentioned here that the retail vendors of newspapers, described in the "appropriate units" are adult men, not boys, engaged in the street-vending of newspapers. The term "newsboys" is one of art. Although many schoolboys sell newspapers, they are not in-

cluded in the "appropriate units" of employees as that term is used in these proceedings.

The Board's final decisions of March 30, 1942, were based upon its findings in an earlier Decision and Direction of Elections. Therein, with respect to the status of newsboys within the described appropriate units, the Board found in effect: Circulation managers control the general execution of policies relating to newspaper distribution. District managers distribute the newspapers published by their respective companies in assigned geographical areas. Each district manager is admittedly an employee of the company whose paper he distributes. The newspapers are delivered to newsboys, who sell them to the public, or to so-called checkmen, who redistribute them to newsboys on neighboring corners. For their services the checkmen receive a small salary from the publisher. At least to the extent of such services, they are admittedly employees of the publisher. Aside from their wholesaling activities, the checkmen occupy positions similar to that of ordinary newsboys.

The district manager charges the newsboy or checkman for papers delivered an amount set by the publisher, except in the case of the News in which instance the district manager himself fixes the amount. The checkman charges the newsboy the same amount he pays the district manager. At the end of the selling period the newsboys settle with the district manager or the checkman, and the checkman settle with the district manager, for the newspapers distributed to them. Except the Herald under some circumstances, the newsboys are given credit for all unsold newspapers returned. The publisher determines the price to be charged the public, and the newsboys retain for themselves the difference between that sum and the amount they pay the publisher.

The district managers determine the number of newspapers in excess of the established order which the newsboys must try to sell. In practice, the newsboys cannot determine the size of their established orders without the cooperation of the district manager.

The newsboy customarily obtains his corner by applying at the plant of the publisher where he consults the district manager, who allocates the street corners in his district. The publishers furnish boxes, racks, money change aprons, and placards advertising special features contained in the newspapers; the equipment is distributed without charge to the newsboys by the district managers with instructions as to its use. Generally, the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made.

The Board found that the record is "replete," with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another. The record also contains evidence with respect to the extent of the publishers' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street; the diligence of the newsboys is closely observed by the circulation department.

As a general practice, the newsboys sell several newspapers and handle magazines although in some instances the publishers have objected to the handling of competing publications. As the same group of newsboys have been handling both the Herald and the News, the district managers of both have instructed the newsboys how to hold, display, and call the two newspapers.

From such findings of fact the Board concluded that each publisher had sufficient right to control its newsboys' manner and means of performing their activities to support the relationship of employer and employee for the purposes of the Act.

Each petitioner has consistently contended that it need not bargain collectively with the Union (1) because the newsboys engaged in street sales are not its employees, (2) because the group designated by the Board is not an appropriate unit for collective bargaining purposes, and (3) because the activities of the newsboys involved have no tendency to lead to labor disputes burdening commerce nor do they affect commerce within the meaning of the Act.

The National Labor Relations Board has no jurisdiction over a controversy between a newspaper publisher and its newsboys unless the latter are employees of the former. §§1, 2 (3), (5), (9), 7, 9 (a), (b), and (c) of the Act [29 USCA §§ 151, 152 (3), (5), (9), 157, 159 (a), (b), and (c)]. Therefore, a primary consideration is the question whether such newsboys are employees within the meaning of the Act.

The Act does not specifically define either the term "employer" or the term "employee," but says simply "the term 'employee' shall include any employee." [2] Since the Act contains no precise definitions, the publishers contend that Congress intended to use the words in their ordinary and conventional sense as understood at the time the statute was enacted. The Board takes the position that a larger classification than that envisioned by common law or other statutes was contemplated. In its brief it concludes that "where the persons involved function in a realistic economic sense as employees of an industrial enterprise Congress intended them to be within the Act." In its Decision and Direction of Election in the certification proceedings, in discussing § 2 (3) of the Act, it asserts that: "In cases where the status of an individual was challenged, we have indicated that the statutory definition of the term 'employee' embraces all employees in the conventional as well as legal sense, except those by express provision excluded and that the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act."

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[2] National Labor Relations Act, § 2 (3) [29 USCA, § 152 (3)]: "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

We believe that the Board's position cannot be supported. The rule that an administrative application of a general statute is conclusive unless arbitrary, Gray v. Powell, 314 US 402, 411; Sunshine Coal Co. v. Adkins, 310 US 381, 399; Shields v. Utah Idaho Central R. Co., 305 US 177, is not applicable to the situation under consideration. Contrary to the cases cited, there is no delegation to an administrative body of power to determine whether the facts are within a specified exception to a statute, the exercise of which power involves an interpretation of terms. Rather does the instant case fall within the general rule that "the interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function." United States v. American Trucking Ass'ns., Inc., 310 US 534, 544.

Since the term "employee" is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments. Such a result is in accord with the basic theory of statutory interpretation that the legislature is presumed to use words in their ordinary sense unless that sense is contradicted by the context of a statute. Old Colony R. Co. v. Commissioner, 284 US 552, 560; Kepner v. United States, 195 US 100, 124; Levy's Lessee v. M'Cartee, 10 US 47, 49; Commissioner v. Plestcheef (CCA 9), 100 Fed. (2d) 62, 64. Since the principle is a long established one, it would seem that if Congress had intended to enlarge upon the common meaning of "employee," it would have specifically so stated in the Act, which sets out specific definitions to several terms used in the Act.

The dictionary definition of "employee" is "one employed by another; one who works for wages or salary in the service of an employer," Webster's New International Dictionary (2nd ed., 1937).

The term "employee" has been interpreted under several federal statutes, other than the National Labor Relations Act, in like manner based upon a broad policy of public benefit. In connection with the Federal Employers Liability Act (45 USCA § 51) the Supreme Court stated: "We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their natural sense, and intended to describe the conventional relation of employer and employee." Robinson v. Baltimore & Ohio RR. Co., 237 US 84, 94. In accord: Hully, Philadelphia & Reading Ry. Co., 252 US 475, 479. In connection with the Social Security Act (42 USCA § 1004) this court asserted: "However, in defining the required relationship, and in drawing the distinctions between an employee and an independent contractor, the regulations [defining an employee as one who is subject to the control of his employer with respect to what shall be done and as to how it shall be done] do no more than reiterate the familiar principles of the common law," Anglin v. Empire Star Mines Co. (CCA 9), 129 Fed. (2d) 914, 917. In accord: Jones v. Goodson (CCA 10), 121 Fed. (2d) 176; Texas Co. v. Higgins (CCA 2), 118 Fed. (2d) 636. A similar result was reached in connection with the Merchant Marine Act (46 USCA § 688), Loe v. Goldstein (CCA 9),

101 Fed. (2d) 967, and with the Federal Safety Appliance Act (45 USCA § 11), Stevenson v. Lake Terminal R. Co. (CCA 6), 42 Fed. (2d) 357.

In determining status as between employee and independent contractor the basic inquiry is where the right to control lies, and the control referred to must be complete control of the means and methods of performance. (See 39 C. J. 1316, Master and Servant § 1518.) State court decisions exemplifying these principles in cases involving the status of newsboys under state workmen's compensation acts are plentiful and persuasive. The leading case in California is New York Indemnity Co. v. Industrial Accident Commission, 213 Cal. 43, 1 Pac. (2d) 12, where newsboys engaged in the street sale of newspapers under circumstances similar to those in the instant case were held not to be employees [3] of the publishers. The newsboy sold for two different publishers newspapers which he bought from a district manager. A certain place on the streets was allotted to each newsboy, who received instructions from the district manager not to intrude upon the place allotted to another. The boy was required to be diligent in selling his papers, or further copies would be refused him and his place would be assigned to another. The district manager was to supervise the activities of the newsboys so as to achieve the sale of as many newspapers as possible. The court held: "* * * we are constrained to hold that the limited amount of control which the publishers of these two newspapers undertook to exercise over the newsboys * * * who daily purchased from their district manager a specified number of copies of their daily issues for a specific sum, payable in cash or at the close of each day's sales, and who undertook the retailing of the same to such customers among the public at large as they were able to attract or procure at a specified place and price fixed by the publishers, would not as a matter of law be sufficient to constitute such newsboys the employees of the publishers of said newspapers * * *." 1 Pac. (2d) 15. The rule upon which the decision was based was followed in State Compensation Fund v. Industrial Accident Commission, 216 Cal. 351, 14 Pac. (2d) 306; and in Hartford Accident & Indemnity Co. v. Industrial Accident Commission, 123 Cal. App. 151, 10 Pac. (2d) 1035. Even though some degree of supervision is exercised other state decisions have emphasized the lack of a control extensive enough to constitute the newsboy an employee of the publisher. Birmingham Post Co. v. Sturgeon, 227 Ala. 162, 149 So. 74; Bernat v. Star-Chronicle Pub. Co. (Mo. App.), 84 S. W. (2d) 429; Creswell v. Charlotte News Pub. Co., 204 N. C. 380, 168 S. E. 408; Balinski v. Press Pub. Co., 118 Pa. Sup. 89, 179 Atl. 897.

The question for decision as to each newspaper separate from any other paper is whether there is substantial evidence that the publisher exercises, or has the right to exercise, sufficient control over the activi-

[3] California Labor Code, § 3000 (formerly § 2009 of California Civil Code): "A servant is one who is employed to render personal service to his employer, other than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the employer, who is called his master."

ties of the newsboys defined in its appropriate unit to support the Board's decision that they were employees under § 2 (3) of the National Labor Relations Act.

Each publisher in its brief points out in detail the only testimony relating to it that could support the Board's findings. We shall not attempt to distinguish between the evidence separately referable to each publisher in view of the fact that we believe, even though all the testimony be applied to all petitioners, or that induced upon behalf of each be applied to it alone, that there is not substantial evidence herein to support the Board's determination that the newsboys are "employees" of the publishers, cf. Matter of Houston Chronicle Publishing Co., 28 NLRB 1043.

We have received an amicus curiae brief from the International Printing Pressmen and Assistants' Union of North America, affiliated with the American Federation of Labor. The point is developed and emphasized therein that the vending of a newspaper by a newsboy is the sale of an intangible service and an integral part of the dissemination of the news from reporter to reader, rather than a sale of tangible personal property. We have studied the brief carefully, and conceding the point made as correct for the sake of argument, we do not follow the brief writer to his conclusion that it affects the status of the vendor in his relation with the newspaper publisher. The service rendered by the newspaper to the paper reader may be rendered either through the agency of an employee or through a contractual agreement with the vendor or through a sale to him for resale to the reader.

In the instance the publisher had at best a limited control over the activities of the newsboys inadequate to constitute it an employer under § 2 (3) of the Act. The profits to the newsboys consisted of the difference between the price paid to the publisher and the price paid by the public. That both prices were fixed by the publisher is not an authoritative indication of control. A similar practice is frequently followed in the consigning of merchandise by a manufacturer to a retailer under agreements to sell at the price fixed by the manufacturer. During the period between the delivery of the newspapers to a newsboy and his paying the district manager for them at the close of each selling day, the boy accounts for the number of newspapers left with him. His is the risk of loss if a newspaper is accidentally destroyed or is stolen. The fact that the burden of loss without fault falls upon the newsboy together with the fact that his compensation results from the variance between the wholesale and retail price of the commodity he vends, fits very closely to the boy's status as an independent merchant and does not fit at all to the status of an employee. The extension of credit for a few hours from delivery to the day's end accounting is no indication that the debtor is an employee. On the contrary, it is evidence of an independent status of the newsboy. Whether or not the newspapers are sold to the newsboy when he takes them from the distributor or whether or not the newspapers are entrusted to the newsboy under an agreement

tacit or express to account to the newspaper management for all papers not returned does not go to the essentials of the relation of employer and employee.

The fact that newsboys dealt in other and often in competing publications is a significant factor pointing toward their independence. Also notable is the practice of buying and selling valuable corners in some instances without the publisher's knowledge or expressed approval of the transactions. Since the place of business of a newsboy is a public street or sidewalk, neither the publisher nor the boy has any proprietory right to any "corner" or locality. The fact that the newsboys do not encroach on one another's territorial jurisdiction is principally a result of a tacit understanding between them based in large measure, it would seem, upon the old law of prior possession and ability to defend a squatter's privilege. Personal conflict over this vendor privilege is not a rarity though it is the exception to the rule of acquiescence. It should be mentioned that many of the newsboys hired at will other boys and relief men to help them sell newspapers in their selected territory, and dismissed them at will.

The Board's finding that the record is "replete" with examples of the removal of newsboys from their corners by district managers is misleading, as in every instance the newspaper merely refused to deliver further copies of its publication to the newsboy, thereby exercising the full extent of its power in the premise. The right of a dealer to terminate his relationship with a retailer by refusing to deliver further merchandise is part of the normal understanding between them, and consequently, such a right cannot be relied upon as tending to constitute one the employer and the other the employee. In effect, "the only control which * * * [the district manager had over the newsboys] was to refuse to sell them any newspapers if they would not respect the usual custom or understanding prevalent among news dealers." Balinski v. Press Pub. Co., 118 Pa. Sup. 89, 179 Atl. 897, 899.

Even though it is conceded that the so-called checkmen are employees of the publisher to the extent that they function as wholesalers, they need not occupy the same status to the extent that they function as newsboys. State Compensation Ins. Fund v. Industrial Accident Commission, 2 Cal. (2d) 94, 39 Pac. (2d) 201. (See also 71 C. J. 477, Master and Servant § 207.) We think the Board is not supported by substantial evidence in its finding that the "newsboys" are employees of the publisher whose newspaper they vend.

The order in each case is set aside.

DENMAN, Circuit Judge, dissenting:

The question here is whether these adult news vendors, miscalled boys, are employee selling agents of the publishers or independent contractors, who obtain title when a certain sum is charged against them on their receipt of the papers from the publishers. If I were free to draw my own inferences from the testimony, I would decide that they were independent contractors, engaged in their own businesses on their respective spots.

However, we are not free to draw our own inferences, and the sole question before us is whether the Board reasonably could infer from the varied incidents of the relationship between the men and the publishers that it is one of employer and employee. Cf. my dissenting opinions in the two cases of National Labor Relations Board v. Citizen News Co., Nos. 9,994 and 9,995, filed April 8, 1943, and April 16, 1943, respectively.

I do not regard the fact that on receipt of the papers by these men a certain amount is charged against them, as conclusively showing a passage of title to them. Employees are frequently charged with the value of the employer's property entrusted to the employees' care, and the latter docked for an equal amount for negligent loss or misuse.

No general bill of sale or written or other agreement existed showing an independent contractor relationship. To me it is significant that with the long period of dispute over that relationship, no such an agreement was in fact made. Nothing in the National Labor Relations Act prevents one from arranging his business relations with another in any form he chooses to select.

Since there is no necessary inference of a sale, I cannot say that, with the evidence of controls usually exercised by employers, the Board could not rationally infer that the men were employees who collected the money for the papers and, as compensation for their services to the publishers, were allowed to keep the difference between the amount charged and the selling price.

(Endorsed:) Opinion and Dissenting Opinion. Filed Jun. 10, 1943. Paul P. O'Brien, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10112

HEARST PUBLICATIONS, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

Upon consideration of the petition of Hearst Publications, Incorporated, filed April 24, 1942, for review of an order of the National Labor Relations Board of March 30, 1942, in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942, of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be and hereby is denied, and said petition for re-

view be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(Endorsed) Decree.

Filed June 10, 1943.

Paul P. O'Brien, *Clerk.*

No. 10114

Stockholders Publishing Company, Inc., petitioner

v.

National Labor Relations Board, respondent

DECREE

Upon consideration of the petition of Stockholders Publishing Company, Inc., filed April 24, 1942, for review of an order of the National Labor Relations Board of March 30, 1942 in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942 of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be and hereby is denied, and said petition for review be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(Endorsed) Decree.

Filed June 10, 1943.

Paul P. O'Brien, *Clerk.*

No. 10115

Hearst Publications, Incorporated, petitioner

v.

National Labor Relations Board, respondent

DECREE

Upon consideration of the petition of Hearst Publications, Incorporated, filed April 24, 1942, for review of an order of the National Labor Relations Board of March 30, 1942, in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942, of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be and hereby is denied, and said petition for review

be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(ENDORSED) DECREE.
Filed June 10, 1943.

PAUL P. O'BRIEN, *Clerk.*

No. 10123

THE TIMES-MIRROR COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

Upon consideration of the petition of Times-Mirror Company, filed May 1, 1942, for review of an order of the National Labor Relations Board of March 30, 1942, in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942, of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be, and hereby is denied, and said petition for review be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(ENDORSED) DECREE.
Filed June 10, 1943.

PAUL P. O'BRIEN, *Clerk.*

Certificate of clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under Rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one thousand eight hundred sixty-one (1,861) pages, numbered from and including 1 to and including 1861, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the respondent, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of August 1943.

(Signed) PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE 1943

Supreme Court of the United States

No. 336, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 337, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 338, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 339, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1943